

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 17-0178653 CAF**

**COREY J. DUNCAN,  
Complainant**

v.

**DUTCHMEN RV COMPANY,  
Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Corey J. Duncan (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) and/or Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in his recreational vehicle (RV) manufactured by Dutchmen RV Company (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that substantially impairs the vehicle's market value after a reasonable number of repair attempts. Consequently, the Complainant's vehicle qualifies for repurchase.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> 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 January 5, 2018, in Paris, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Kyrie Duncan, the Complainant's wife, also testified for the Complainant. Matt Gaines, Product Manager, represented and testified for the Respondent.

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<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

##### 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.”<sup>5</sup>

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<sup>2</sup> TEX. OCC. CODE § 2301.604(a).

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.601(4).

<sup>5</sup> *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.”<sup>6</sup>

**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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>7</sup>

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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>8</sup>

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:

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<sup>6</sup> *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.”).

<sup>7</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

#### 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, someone on behalf of the owner, or the Department provided written notice of the alleged defect or nonconformity to the manufacturer;<sup>13</sup> (2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>14</sup> 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.<sup>15</sup>

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<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>10</sup> TEX. OCC. CODE § 2301.605(c).

<sup>11</sup> *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.’”).

<sup>12</sup> *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.”).

<sup>13</sup> TEX. OCC. CODE § 2301.606(c)(1).

<sup>14</sup> TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer satisfied the “opportunity to cure” requirement when the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt a repair on the manufacturer's behalf. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(2).

## 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” and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect.<sup>16</sup> The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”<sup>17</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>18</sup> The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that each required fact is more likely than not true.<sup>19</sup> If any required fact appears equally likely or unlikely, then the Complainant 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.<sup>20</sup> 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.”<sup>21</sup> However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.<sup>22</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>23</sup>

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<sup>16</sup> TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

<sup>17</sup> TEX. OCC. CODE § 2301.603(a).

<sup>18</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>19</sup> *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

<sup>20</sup> “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.”).

<sup>21</sup> 43 TEX. ADMIN. CODE § 215.202(a)(2).

<sup>22</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>23</sup> *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

### A. Complainant's Evidence and Arguments

On May 4, 2016, the Complainant, purchased a new 2016 Denali DE307RLS from Explore USA RV Supercenter, an authorized dealer of the Respondent, in Fort Worth, Texas. The vehicle's limited warranty provides coverage for one year from the date of purchase. On July 12, 2017, the Complainant provided a written notice of defect to the Respondent. On August 7, 2017, the Complainant filed a complaint with the Department alleging that: the living room/kitchen air conditioning (AC) froze; the bedroom AC compressor would shut down; the bedroom slide leaked; the couches were not bolted; the dining room slide leaked; the toilet bowl seal leaked; the leveling system malfunctioned; and the living room/kitchen wall collapsed. The Complainant testified that the issues regarding the couches, toilet bowl, and leveling system were successfully resolved. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Issue
09/08/2017 10/28/2017	Living room/kitchen wall collapsed; AC in living/kitchen area freezing; bedroom AC compressor shuts down; bedroom slide leak; dining room slide leak;
05/27/2017 08/21/2017	Rear AC will freeze; front AC will shut down; water leak in slide; replace wall panel; bedroom slide leak
02/20/2017 03/09/2017	Slide moving wall
03/30/2017	Wall board cracked from slide flexing wall
10/21/2016	AC in living room freezes; water leaking in passenger side slide; water leaking onto bedroom floor – possibly from slide; bedroom AC cycles on and off

The Complainant testified that the living/kitchen area wall originally collapsed and now flexes (after repair). He pointed out that he had not been able to check the function of the AC due to the freezing weather at the time he received the RV back from repair. Mrs. Duncan testified that the entire (living/kitchen area) AC system would freeze and expel ice and water onto the floor. She last noticed this occurring in August or September of 2016. The Complainant explained that the dealer could not replicate the issue. Mrs. Duncan was not aware of an actual repair attempt for the AC issue. The Complainant described the bedroom AC compressor as short cycling, which he last noticed about October 21, 2016. Mrs. Duncan believed the time was September 2016. The bedroom AC issue also could not be duplicated. Mrs. Duncan testified that the bedroom slide would leak every time when raining. She last noticed this leak in August 2016 during a storm. Mrs.

Duncan stated that the dining room slide leaked twice. She explained that when getting a book from the cabinet, she would find a puddle of water in it. Both instances of leaking occurred between June and September 2016. In regard to the collapsed living/kitchen wall, the Complainant stated that the wall originally had a divot/indentation. Part of the rail on the edge had bent. The dealer discovered that a bolt did not hold the rail in place, so the dealer installed a lag bolt and gusset. The Complainant noted that the wall still flexed. Mrs. Duncan pointed out that when they originally got the vehicle, the wall did not flex and the slide did not make a popping sound.

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

Mr. Gaines testified that he instructed the dealer's service manager to check the freeze sensor and found that it was not on but functioned after popping it on. He stated Dometic manufactured the AC units. The bedroom AC did not appear to have any issues. The bedroom slide had a missing patch, which allowed water to travel inside. All the patches were replaced. With respect to the dining room slide leak, a moisture meter showed no moisture. After three to four days of rain, the slide did not exhibit any moisture inside. Mr. Gaines explained that such flexing was within specifications. Specifically, the maximum flexing just slightly exceeded 5/8ths of an inch, which was normal for walls during slide operation. On cross-examination, Mr. Gaines elaborated that other RVs will exhibit the same flexing.

### **C. Inspection**

During the inspection of the vehicle at the hearing, the living/kitchen area wall would flex as the slide extended. The floor of the bathroom and the floor under the left side of the bedroom slide exhibited some rust stains. The Complainant noted that a leak occurred inside an overhead cabinet on the dining/living area slide.

### **D. Analysis**

Lemon Law relief does not apply to all issues that a consumer may have with a vehicle but only to defects covered by warranty (warrantable defects).<sup>24</sup> 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

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<sup>24</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); Tex. Occ. Code § 2301.204

its vehicles to whatever coverage the warranty provides. Here, the warranty generally provides that the Respondent: “WARRANTS for a period of one (1) year from the date of purchase that the recreational vehicle manufactured and assembled by Keystone shall be free from defects in materials and workmanship supplied and attributable to Keystone.” According to these terms, the warranties only apply to defects in materials or workmanship (manufacturing defects).<sup>25</sup> A manufacturing defect is an isolated 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. Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle’s design characteristics (which exist before manufacturing) are not warrantable defects. Design characteristics result from the vehicle’s specified design and not from any error during manufacturing.<sup>26</sup> In sum, because the warranty only covers manufacturing defects, the Lemon Law relief does not apply to design characteristics or design defects. Additionally, the warranty specifically excludes “[e]quipment, products, components, appliances, or accessories not manufactured by Keystone whether or not warranted, including but not limited to, tires, batteries, generators, washer, dryer, electronics and other installed equipment or accessories.” Consequently, Lemon Law relief does not apply to defects in any not components manufactured by the Respondent.

## 1. AC Issues

The warranty specifically excludes components not manufactured by the Respondent, including AC units manufactured by Dometic. Because the warranty does not apply to the AC

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<sup>25</sup> Courts have affirmed that warranty language covering “defects in material or workmanship” do not cover design issues. *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.”).

<sup>26</sup> 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.” *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

units, the Lemon Law does not provide any relief for the living/kitchen AC freezing and the bedroom AC compressor shutting down.

**2. Bedroom Slide Leak**

The record does not show any continued leaking after repair. Accordingly, a preponderance of the evidence does not show that the leak continues to exist,

**3. Dining Room Slide Leak**

No repair occurred for the leak in the dinette/love seat (door side) slide because no moisture was found after raining. Nevertheless, the evidence shows that the slide had water penetrate into the overhead cabinets. Since no repairs were made, the cause of the leak more likely than not still exists. Under the reasonable prospective purchaser standard, this nonconformity substantially impairs the value of the vehicle, given the potential for water penetration and subsequent damage.

**4. Wall Flexing**

Although the wall exhibited flexing when extending the slide, the record indicates that such flexing still fell within specifications. Even though the wall may not have flexed previously, the law only requires that the vehicle fall within specifications as opposed to being in the same condition prior to exhibiting the defect. In this case, the record shows that the amount flexing complies with the manufacturer's specifications. Therefore, the flexing is not a warrantable defect.

**III. Findings of Fact**

1. On May 4, 2016, the Complainant, purchased a new 2016 Denali DE307RLS from Explore USA RV Supercenter, an authorized dealer of the Respondent, in Fort Worth, Texas.
2. The vehicle's limited warranty provides coverage for one year from the date of purchase.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
09/08/2017 10/28/2017	Living room/kitchen wall collapsed; AC in living/kitchen area freezing; bedroom AC compressor shuts down; bedroom slide leak; dining room slide leak;
05/27/2017 08/21/2017	Rear AC will freeze; front AC will shut down; water leak in slide; replace wall panel; bedroom slide leak
02/20/2017 03/09/2017	Slide moving wall
03/30/2017	Wall board cracked from slide flexing wall
10/21/2016	AC in living room freezes; water leaking in passenger side slide; water leaking onto bedroom floor – possibly from slide; bedroom AC cycles on and off

4. On July 12, 2017, the Complainant provided a written notice of defect to the Respondent.
5. On August 7, 2017, the Complainant filed a complaint with the Department alleging that: the living room/kitchen air conditioning (AC) froze; the bedroom AC compressor would shut down; the bedroom slide leaked; the couches were not bolted; the dining room slide leaked; the toilet bowl seal leaked; the leveling system malfunctioned; and the living room/kitchen wall collapsed.
6. On October 16, 2017, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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 January 5, 2018, in Paris, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Kyrie Duncan, the Complainant's wife, also testified for the Complainant. Matt Gaines, Product Manager, represented and testified for the Respondent.
8. The warranty expired on May 4, 2017.

9. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license & registration	\$41,917.67
Date of delivery	05/04/16
Date of first report of defective condition	10/21/16
Date of hearing	01/05/18
Days out of service	155
Useful life determination	3,650

Purchase price, including tax, title, license & registration				\$41,917.67
<i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery	10/21/16	-	05/04/16	= 170
<i>Impaired Days:</i> Date of hearing less date of first report of defective condition	01/05/18	-	10/21/16	= 441
Less days out of service for repair				<u>-155</u>
				286
<i>Reasonable Allowance for Use Calculations:</i> Unimpaired days	170	÷	3,650	× \$41,917.67 = \$1,952.33
Impaired days	286	÷	3,650	× \$41,917.67 × 50% = <u>\$1,642.25</u>
<b>Total reasonable allowance for use deduction</b>				<b>\$3,594.58</b>
Purchase price, including tax, title, license & registration				\$41,917.67
Less reasonable allowance for use deduction				<u>-\$3,594.58</u>
Plus filing fee refund				\$35.00
Plus incidental expenses				<u>\$0.00</u>
<b>TOTAL REPURCHASE AMOUNT</b>				<b>\$38,358.09</b>

#### 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 Complainant 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 Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant, a person on behalf of the Complainant, or the Department provided written 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 Complainant timely filed the complaint commencing this proceeding. TEX. OCC. CODE § 2301.606(d).
9. The Complainant's vehicle qualifies for replacement or repurchase. A warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle continues to exist 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 Complainant's 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(s) in the reacquired vehicle identified in this Order. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;

2. The Respondent shall repurchase the subject vehicle in the amount of **\$38,358.09**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of the return, 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 Complainant is responsible for providing the Respondent with clear title to the vehicle;
3. Within 20 days after the date this Order becomes final under Texas Government Code § 2001.144,<sup>27</sup> the parties shall complete the return and repurchase of the subject vehicle. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 days of the transfer.

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<sup>27</sup> (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, 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.

**SIGNED February 12, 2018**

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