

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 17-0178712 CAF**

<b>MICHAEL JOHNSON,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>HYUNDAI MOTOR AMERICA,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Michael Johnson (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2015 Hyundai Genesis. Complainant asserts that condensation collects in the vehicle’s taillights and that the vehicle’s air conditioning system emits a mildew smell when it is turned on. Hyundai Motor America (Respondent) argued that the vehicle is operating as designed and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repurchase 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 November 29, 2017, in Waco, Texas before Hearings Examiner Edward Sandoval. Complainant, Michael Johnson, represented himself at the hearing. Also testifying for Complainant was his wife, Jessica Senicero, and his two step-children, Isaiah Senicero and Elia Senicero. Respondent was represented by Susan M. Lucas, Representative.

**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

---

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

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

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. Michael Johnson's Testimony**

Complainant purchased a new 2015 Hyundai Genesis from Greg May Hyundai (Greg May), in Waco, Texas on February 18, 2016.<sup>6</sup> The vehicle's mileage was 27 at the time of delivery.<sup>7</sup> Respondent provided a new vehicle limited warranty for the vehicle, which provides coverage for five (5) years or 60,000 miles from the date of delivery, whichever comes first.<sup>8</sup> Respondent also provided a powertrain warranty for the vehicle good for ten (10) years or 100,000 miles.<sup>9</sup> On the date of hearing the vehicle's mileage was 15,106. At the time of hearing, the warranties were still in effect.

Complainant testified that upon purchasing the vehicle, he observed that the vehicle's taillight had water inside of the light cover. As a result, he took the vehicle to Greg May for repair for the issue on March 2, 2016. The dealer's service technician observed condensation inside the left side taillight assembly.<sup>10</sup> The technician replaced the taillight assembly in order to resolve the issue.<sup>11</sup> The vehicle's mileage on this occasion was 250.<sup>12</sup> The vehicle was in the dealer's possession for

---

<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. 3, Retail Purchase Agreement dated February 18, 2016.

<sup>7</sup> *Id.*

<sup>8</sup> Complainant Ex. 10, 2015 Owner's Handbook & Warranty Information, p. 10.

<sup>9</sup> *Id.*

<sup>10</sup> Complainant Ex. 4, Repair Order dated March 2, 2016.

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

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

approximately a week during this repair visit. Complainant was provided with a rental vehicle while his vehicle was being repaired.

A couple of months later Complainant observed that the right side taillight had condensation within the cover. As a result, he took the vehicle to Greg May for repair for the issue on May 30, 2016. The dealer's service technician determined that the seal to the taillight was weak and replaced the passenger's side rear combo lamp.<sup>13</sup> The vehicle's mileage when it was taken to the dealership on this occasion was 2,187.<sup>14</sup> The vehicle was in Greg May's possession for one (1) day. Complainant received a loaner vehicle while his vehicle was being repaired.

Less than a month later, Complainant observed that the passenger's side taillight again had developed condensation. He took the vehicle to Greg May for repair for the issue on June 15, 2016. The dealer's service technician verified the presence of condensation and determined that the taillight seal was defective.<sup>15</sup> The technician replaced the passenger's side rear combo lamp assembly to resolve the issue with the condensation.<sup>16</sup> The mileage on the vehicle on this occasion was 2,473.<sup>17</sup> The vehicle was in the dealer's possession for one (1) day. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant took the vehicle to Greg May for repair on April 26, 2017. Complainant indicated that he had two (2) concerns with the vehicle on this occasion: the passenger taillight had developed condensation again and the vehicle's air conditioner emitted a bad mildew or mold odor when it was being used. The dealer's service technician installed a new lens on the passenger's side taillight to resolve the condensation issue.<sup>18</sup> The technician verified that the vehicle had a mildew odor being emitted from the vehicle's air conditioning vents.<sup>19</sup> The technician performed a process to line the vehicle's air conditioning system with an antimicrobial substance in order to address the issue per the service department's service manager.<sup>20</sup> The vehicle's mileage when it was delivered to the dealer on this occasion was 10,580.<sup>21</sup> The vehicle was in Greg May's possession for a few days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

---

<sup>13</sup> Complainant Ex. 5, Repair Order dated May 30, 2016.

<sup>14</sup> *Id.*

<sup>15</sup> Complainant Ex. 6, Repair Order dated June 15, 2016.

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

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

<sup>18</sup> Complainant Ex. 7, Repair Order dated April 26, 2017.

<sup>19</sup> *Id.* Complainant had apparently raised the mildew odor as an issue in the past as the service advisor indicated on the repair order that "prior attempts at solving this issue have not been successful." Complainant also testified that he had raised the issue on at least two (2) prior occasions and he continued to intermittently smell the odor. Complainant could not recall the dates of the prior repair attempts for the issue and they were not documented by Greg May's representatives.

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

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

Complainant stated that he and his wife continued to smell the mildew odor in the vehicle's passenger cabin when they used the air conditioner. The odor can be very strong depending on the ambient heat and humidity. Because of the odor issue, Complainant took the vehicle to Greg May for repair on June 27, 2017. The dealer's service technician could not duplicate the issue, but performed an evaporative clean procedure on the vehicle's air conditioning system for customer satisfaction.<sup>22</sup> The vehicle's mileage on this occasion was 11,916.<sup>23</sup> The vehicle was in the dealer's possession for about 20 days during which the dealer addressed other issues with the vehicle which were not raised by Complainant for the Lemon Law complaint. Complainant received a loaner vehicle from the dealer while his vehicle was being repaired.

Complainant took the vehicle to Greg May for the odor concern again on August 10, 2017. The dealer's service technician was able to detect an odor after the vehicle's engine was turned off with the air conditioner on.<sup>24</sup> The technician determined that the problem was being caused by water not draining from the vehicle's evaporator case.<sup>25</sup> He was advised by Respondent's technical assistance advisors to replace the vehicle's cabin filter and to perform a drying procedure for the vehicle, which the technician did.<sup>26</sup> The technician also advised Complainant to switch the vehicle's air conditioner setting to fresh air while driving in order to reduce the amount of water left in the evaporator case.<sup>27</sup> The vehicle's mileage at the time of the repair was 12,442.<sup>28</sup> The vehicle was in the dealer's possession for 19 days while it was being repaired. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On August 25, 2017, Complainant mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.<sup>29</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 8, 2017.<sup>30</sup>

Respondent's representative contacted Complainant via a letter mailed to the Department's case advisor, Evan Whitis, and requested that they be given an opportunity to inspect the vehicle in order to perform a final repair attempt.<sup>31</sup> Complainant agreed to allow Respondent to perform a final repair attempt on the vehicle. This was done on October 4, 2017, at Greg May's location. Respondent's field engineer was unable to duplicate the mildew odor concern and did not perform

---

<sup>22</sup> Complainant Ex. 8, Repair Order dated June 27, 2017.

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

<sup>24</sup> Complainant Ex. 9, Repair Order dated August 10, 2017.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

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

<sup>29</sup> Complainant Ex. 2, Letter to Hyundai Motor Manufacturing Alabama LLC mailed August 25, 2017.

<sup>30</sup> Complainant Ex. 1, Lemon Law complaint dated August 8, 2017. Although the complaint indicates it was signed by Complainant on August 27, 2017, the complaint was actually received by the Texas Department of Motor Vehicles on August 8, 2017, which is the effective date of the complaint.

<sup>31</sup> Respondent Ex. 1, Letter to Evan Whitis dated September 29, 2017.

any repairs to the vehicle at the time.<sup>32</sup> The vehicle's mileage on this occasion was 13,533.<sup>33</sup> Complainant was provided with a loaner vehicle while his vehicle was being repaired.<sup>34</sup>

Complainant testified that he has not observed any condensation in the vehicle's taillights since the repair performed on April 26, 2017. In addition, Complainant stated that the mildew odor occurs intermittently and can be very strong. He's been advised by Greg May's technicians that when he's driving to try to turn the air conditioner off before he gets to his destination in order to allow the water in the air conditioner system to evaporate quicker. Complainant testified that other people have commented on the odor when they have been passengers in the vehicle. Complainant has tried allowing the vehicle to run for a period of time before turning the air conditioner on in order to try to alleviate the odor. He last smelled the odor sometime in October of 2017.

## **2. Jessica Senicero's Testimony**

Jessica Senicero, Complainant's wife, is the primary driver of the vehicle. She testified that there were two (2) issues with the vehicle: water collecting in the taillights and a bad odor in the vehicle's cabin. She stated that the taillight issue has been repaired, but the odor still occurs intermittently.

Ms. Senicero testified that she first noticed an unpleasant odor in the vehicle in the summer of 2016. It's a mildew smell that occurs primarily during the summer when the vehicle's air conditioning system is used. The odor is usually noticeable if the vehicle is allowed to sit and is not started for a while and then started. The odor is noticeable for about 30 to 45 minutes after starting the vehicle and will then dissipate.

Ms. Senicero verified that the vehicle had been taken for repair for the odor issue several times, but the odor still is noticeable on occasion. She stated that she and Complainant were advised by the dealer's representatives that one way to avoid the odor was to turn off the vehicle's air conditioner about 5 minutes before turning off the vehicle. However, the odor still occurred on occasion after following the representatives' advice.

## **3. Isaiah and Elia Senicero's Testimony**

Isaiah Senicero, Ms. Senicero's son, testified for Complainant. He stated that he periodically smells a mildew or wet towel odor in the vehicle. Mr. Senicero stated that the odor is so bad that he doesn't want to ride in the vehicle. Sometimes the odor is noticeable on a daily basis. Mr. Senicero stated that on one occasion it was so bad that he requested that the air conditioner be turned off.

---

<sup>32</sup> Complainant Ex. 11, Repair Order dated October 4, 2017.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

Elia Senicero, Ms. Senicero's son, also testified for Complainant. He stated that he has noticed the odor in the vehicle on occasion. He stated that the odor is so bad that he has had to cover his nose in an attempt not to experience it.

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

Susan M. Lucas, Hyundai representative, testified for Respondent. She does not have an automotive background and was not familiar with the vehicle. She had not seen the vehicle prior to the hearing date. Ms. Lucas stated that Respondent performed a final repair attempt on the vehicle on October 4, 2017. Hyundai's field engineer was unable to duplicate Complainant's concern regarding the bad odor issue and did not perform any repairs.<sup>35</sup> Ms. Lucas also stated that Respondent does not feel that the vehicle has a defect or nonconformity warranting repurchase or replacement of the vehicle.

### **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. Condensation in Taillights Issue**

The first issue raised by Complainant about the vehicle had to do with condensation within the vehicle's taillights. Complainant took the vehicle to Respondent's authorized dealer for the issue on four (4) occasions: March 2, 2016; May 30, 2016; June 15, 2016; and April 26, 2017. Complainant and his wife both testified that the issue was finally resolved on the April 26, 2017 repair visit and that the vehicle's taillights have not had condensation in them since this date. The evidence indicates that the issue has been repaired and can no longer provide a basis for ordering repurchase or replacement of the vehicle.

#### **2. Mildew Odor in Vehicle**

The second issue raised by Complainant had to do with a mildew odor being emitted by the vehicle's air conditioning system. Greg May's service technicians verified the mildew odor in the vehicle when it was turned off with the air condition running and then restarted either overnight or

---

<sup>35</sup> Respondent Ex. 2, VINquest Service Details dated October 19, 2017.

later in the same day. Respondent has not been able to resolve the issue and the testimony has established that the odor is bad enough so that the occupants must turn off the vehicle's air conditioner in order to be able to breathe comfortably in the vehicle and not be subjected to the bad odor. The vehicle's mildew odor when using the air conditioner make it less desirable to drive than comparable vehicles particularly in Texas during the summer when an air conditioner is essential. Ordinarily, an odor issue in a vehicle would not constitute sufficient grounds to warrant a repurchase or replacement of a vehicle under the Lemon Law. However, in the present case, the service technicians were able to verify the presence of an odor on multiple occasions and were able to pinpoint the cause as water being retained in the vehicle's evaporator case. The evidence indicates that Complainant's vehicle has a defect or nonconformity which substantially impairs its use and market value.

Complainant presented the vehicle to Greg May, an authorized dealer of Respondent, due to the mildew odor concern on the following dates: April 26, 2017; June 27, 2017; and August 8, 2017. In addition, the evidence revealed that Complainant raised the odor issue to Greg May's representatives on at least two (2) occasions prior to April 26, 2017, which were not documented by the dealer. 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 met the requirements of this test. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with a final opportunity to cure the defect. Complainant informed Respondent via letter mailed August 25, 2017, of the issues with the vehicle and providing them with an opportunity to cure of which Respondent availed themselves. The vehicle was inspected and a final repair attempt performed on October 4, 2017, by Respondent's representative who determined that no repairs were necessary at that time.

Although Respondent or its authorized representatives have been provided several opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to do so. As such, Complainant has met his burden of proof to establish a warrantable and existing defect or condition that substantially impairs the vehicle's use and market value.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

### III. FINDINGS OF FACT

1. Michael Johnson (Complainant) purchased a new 2015 Hyundai Genesis on February 18, 2016, from Greg May Hyundai (Greg May), in Waco, Texas with mileage of 27 at the time of delivery.
2. The manufacturer of the vehicle, Hyundai Motor America (Respondent), issued a new vehicle limited warranty for the vehicle providing coverage for five (5) years or 60,000 miles from the date of delivery to the owner, whichever occurs first. In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for the powertrain for ten (10) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 15,106.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Complainant has noticed that the vehicle's taillights have accumulated condensation in them and that the vehicle's air conditioner intermittently emits a bad mildew odor.
6. Complainant took the vehicle to Respondent's authorized dealer, Greg May, in order to address his concerns with the condensation in the taillights, on the following dates:
  - a. March 2, 2016, at 250 miles;
  - b. May 30, 2016, at 2,187 miles;
  - c. June 15, 2016, at 2,473 miles; and
  - d. April 26, 2017, at 10,580 miles.
7. On March 2, 2016, Greg May's service technician replaced the vehicle's driver's side taillight assembly in an attempt to resolve the issue.
8. On May 30, 2016, Greg May's service technician replaced the vehicle's passenger's side rear combo lamp in order to address the condensation issue.
9. On June 15, 2016, Greg May's service technician replaced the passenger's side rear combo lamp assembly to address the condensation issue.
10. Condensation has not reappeared in the vehicle's taillights since the April 26, 2017 repair at which time a new lens was installed in the passenger's side taillight.
11. Complainant took the vehicle to Greg May in order to address his concerns with the mildew odor indicated in Findings of Fact 5, on the following dates:
  - a. April 26, 2017, at 10,580 miles;

- b. June 27, 2017, at 11,916 miles; and
  - c. August 10, 2017, at 12,442 miles.
12. On April 26, 2017, Greg May's service technician confirmed a mildew odor was being emitted by the air conditioning system and performed a process to line the system with an antimicrobial substance in order to resolve the issue.
  13. On June 27, 2017, Greg May's service technician could not duplicate the issue and was unable to detect a mildew odor, but performed an evaporative clean procedure on the vehicle's air conditioning system for customer satisfaction.
  14. On August 10, 2017, Greg May's service technician replaced the vehicle's cabin filter and then performed a drying procedure for the vehicle's air conditioning system. In addition, the technician advised Complainant to switch the air conditioning setting to "fresh air" while driving in order to reduce the amount of water left in the vehicle's evaporator case.
  15. Respondent, through its authorized dealers, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity in the vehicle continues to exist.
  16. The defective condition of Complainant's vehicle substantially impairs its use and market value. The mildew odor created by the vehicle's air conditioning system makes the vehicle less desirable to drive than comparable vehicles.
  17. Complainant provided written notice of the defect to Respondent on August 25, 2017, and Respondent was given the opportunity to inspect the vehicle on October 4, 2017.
  18. On August 8, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
  19. On October 10, 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.
  20. The hearing in this case convened and the record closed on November 29, 2017, in Waco, Texas before Hearings Examiner Edward Sandoval. Complainant, Michael Johnson, represented himself at the hearing. Also testifying for Complainant was his wife, Jessica Senicero, and his two step-children, Isaiah Senicero and Elia Senicero. Respondent was represented by Susan M. Lucas, Representative.

#### 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's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
9. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to repurchase Complainant's 2015 Hyundai Genesis. Tex. Occ. Code § 2301.604(a)(1).

**IT IS THEREFORE ORDERED** that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by 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 this final order;

2. Respondent shall repurchase the subject vehicle in the amount of **\$30,086.66**. In addition, Complainant is entitled to reimbursement of the lemon law filing fee in the amount of **\$35.00**. The total refund of **\$30,121.66** shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of return, 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, Complainant is responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$33,684.12
Delivery mileage	27
Mileage at first report of defective condition	10,580
Mileage on hearing date	15,106
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$33,684.12
Mileage at first report of defective condition		10,580			
Less mileage at delivery		<u>-27</u>			
Unimpaired miles		10,553			
Mileage on hearing date		15,106			
Less mileage at first report of defective condition		<u>-10,580</u>			
Impaired miles		4,526			
Reasonable Allowance for Use Calculations:					
Unimpaired miles		<u>10,553</u>			
	120,000		X	\$33,684.12	= \$2,962.24
Impaired miles		<u>4,526</u>			
	120,000		X	\$33,684.12	X .5 = <u>\$635.23</u>
Total reasonable allowance for use deduction:					\$3,597.46
Purchase price, including tax, title, license and registration					\$33,684.12
Less reasonable allowance for use deduction					-\$3,597.46
Plus filing fee refund					<u>\$35.00</u>
<b>TOTAL REPURCHASE AMOUNT</b>					<b>\$30,121.66</b>

3. Within twenty (20) calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day

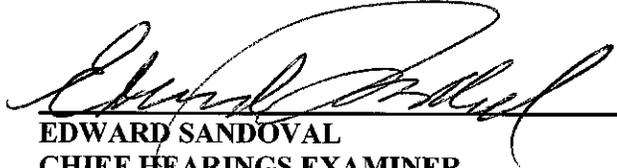
from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);.

4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department;<sup>36</sup>
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous. Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

### 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 **GRANTED**. It is further **ORDERED** that Respondent, Hyundai Motor America, shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

**SIGNED December 22, 2017**

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

---

<sup>36</sup> Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.