

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0182435 CAF**

**WILLIAM GLEN DAVIS,  
Complainant**

v.

**FORD MOTOR COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

William Glen Davis (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for an alleged defect in his 2015 Ford F-150. Complainant asserts that the vehicle's stop/start function does not work properly. Ford Motor Company (Respondent) asserts that the stop/start function is working as designed. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repair relief at this time.

**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 June 27, 2018, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant, William Glen Davis, appeared and represented himself. Respondent was represented telephonically by Dionne Grace, Consumer Affairs Legal Analyst. Also testifying for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.” Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” Section 2301.603(b) goes on to state that “subsection (a) applies after the expiration date of a warranty if: (1) during the term of the warranty, the owner or the owner’s agent reported the nonconformity to the manufacturer, converter, or distributor . . . .”

Occupations Code § 2301.606 provides that in order to have the options of repurchase or replacement available as remedies, Complainant must commence the Lemon Law proceeding “not later than six months after the earliest of:

- (1) The expiration date of the express warranty term; or
- (2) The dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.”

However, for Complainants who fail to meet the timelines described above repair relief is available under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

#### **B. Complainant’s Evidence and Arguments**

Complainant purchased a new 2015 Ford F-150 on October 13, 2015, from Automax Ford in Killeen, Texas with mileage of 234 at the time of delivery.<sup>1,2</sup> Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for the three (3) years or 36,000 miles, whichever comes first. On the date of hearing the vehicle’s mileage was approximately 45,079. The bumper-to-bumper warranty for the vehicle had expired by the date of hearing.

Complainant testified that a few months after purchasing the vehicle, he began to notice that the stop/start function was not working properly. This function will turn off the vehicle’s engine at a full stop while the driver is depressing the brake pedal and the transmission is still in drive.

Complainant took the vehicle to Automax for repair for the issue on April 8, 2016, at 8,940 miles; May 4, 2016, at 10,060 miles; and May 18, 2016, at 10,727 miles.<sup>3</sup> The technicians on these occasions were able to reset the system which would then function properly for a day or two before it stopped working again. On each occasion, the repairs took less than a day and Complainant waited at the dealership for the repairs to be completed. He did not get a loaner vehicle on any of the above-cited repair visits.

Complainant was advised that he did not have to take the vehicle the same dealer as where he purchased it in order for warranty repairs to be performed. This was an issue because Complainant was driving from Lampasas to Killeen whenever he took the vehicle for repair. As a result, Complainant took the vehicle to Hoffpauir, Inc. (Hoffpauir) in Lampasas for another

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<sup>1</sup> Complainant Ex. 2, Buyer’s Agreement dated October 13, 2015.

<sup>2</sup> Complainant Ex. 3, Odometer Disclosure Statement dated October 13, 2015.

<sup>3</sup> Complainant Ex. 4, History Listing, pp. 5-8.

repair for the issue on October 21, 2016.<sup>4</sup> The service technician discovered battery monitoring system (BMS) errors in the vehicle and reset the BMS in order to resolve the concern. The vehicle's mileage was 17,317.<sup>5</sup> The vehicle was in Hoffpauir's possession for three (3) days during this visit. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

The stop/start function operated fine for a day or two, but then stopped working. Complainant took the vehicle to Hoffpauir on November 1, 2016, for repair for the issue. Hoffpauir's service technician replaced the vehicle's battery due to a low charge and reset the BMS.<sup>6</sup> The vehicle's mileage on this occasion was 17,709.<sup>7</sup> The vehicle was in Hoffpauir's possession for six (6) days. Complainant was not provided a loaner for his use while his vehicle was being repaired.

The issue seemed to be resolved, but then the stop/start function again failed to work properly. Complainant took the vehicle to Hoffpauir for repair on April 26, 2017. Hoffpauir's technician reset the vehicle's BMS in order to resolve the issue.<sup>8</sup> The vehicle's mileage at the time was 26,386.<sup>9</sup> The vehicle was in Hoffpauir's possession for almost a month. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

The stop/start function operated properly for a few days and then stopped working. Complainant took the vehicle to Automax for repair on July 5, 2017. Automax's service technician did not perform any repair to the vehicle, but contacted Respondent's hotline to get assistance in repairing the vehicle. The technician had not heard back from a hotline representative before Complainant took the vehicle and left.<sup>10</sup> The vehicle's mileage on this occasion was 30,694.<sup>11</sup>

On August 14, 2017, Complainant took the vehicle back to Automax for repair for the stop/start issue. Automax's technician verified the concern and recharged the vehicle's battery to address the issue.<sup>12</sup> The vehicle's mileage at the time was 32,659.<sup>13</sup> The vehicle was in Automax's possession for three (3) days. Complainant was provided a loaner vehicle while his vehicle was being repaired.

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<sup>4</sup> Complainant Ex. 5, Repair Order dated October 21, 2016.

<sup>5</sup> *Id.*

<sup>6</sup> Complainant Ex. 6, Repair Order dated November 1, 2016.

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

<sup>8</sup> Complainant Ex. 7, Repair Order dated April 26, 2017.

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

<sup>10</sup> Complainant Ex. 4, History Listing, p. 5.

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

<sup>12</sup> *Id.*, pp. 3-4.

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

The stop/start function operated properly for a few days, after which Complainant began having problems with it. Complainant took the vehicle to Automax for repair for the issue on September 11, 2017. Automax's technician reset the vehicle's BMS in order to resolve the issue.<sup>14</sup> The vehicle's mileage on this occasion was 33,962.<sup>15</sup> Complainant was provided a loaner vehicle for the day that the vehicle was being repaired.

The stop/start function operated properly for a day or two, but then stopped working correctly. Complainant took the vehicle to Automax for repair on October 18, 2017. Automax's service technician installed a new battery monitoring sensor to the vehicle in order to address the concern.<sup>16</sup> The vehicle's mileage on this occasion was 35,695.<sup>17</sup> Complainant's vehicle was in Automax's possession for three (3) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on January 9, 2018.<sup>18</sup>

Complainant stated that the vehicle's stop/start function does not always work as designed, although it worked properly on the date of hearing.

### C. Respondent's Evidence and Arguments

Sayed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has worked in the automotive industry for 19 years. He worked several years as an independent automotive technician. Mr. Bashir was hired by Respondent in 2007. He moved to his current position in 2009. Mr. Bashir is an Automotive Service Excellence (ASE) Master Certified Technician. He is one class away from achieving Ford Master Certification.

Mr. Bashir testified that he has never seen or inspected Complainant's vehicle. He also stated that the vehicle has never been inspected by any of Respondent's field service engineers.

Mr. Bashir explained that the automatic stop/start function was designed by Respondent to help improve fuel economy. When activated the function will shut off the vehicle's engine while the vehicle is in gear and the brake pedal is fully depressed. There is a warning light in the

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<sup>14</sup> *Id.*, pp. 2-3.

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

<sup>16</sup> *Id.*, pp. 1-2.

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

<sup>18</sup> Complainant Ex. 1, Complainant's Lemon Law/Warranty Performance complaint dated January 9, 2018. Although the complaint was signed by Complainant on December 30, 2017, it was not received by Texas Department of Motor Vehicles until January 9, 2018, which is the effective date of the complaint.

instrument panel cluster which will change colors to indicate if the function is engaged. At a full stop, if the light is green, then the function is engaged properly. If the light is grayed out, then the function is not working at the time. This can be due to a number of reasons, including the ambient air temperature requiring the vehicle's air conditioning to be working at a certain level or because the vehicle battery charge was below 70% at the time the vehicle was started. Finally, if the light is amber, then there is a fault with the function and it needs to be serviced. The function can also be manually disabled by the vehicle's driver by pressing a button. Mr. Bashir also stated that information about the stop/start function is contained within the vehicle's owner's manual.

#### **D. Analysis**

In order to determine whether Complainant has a remedy under Section 2301.204 of the Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent. The testimony establishes that Complainant has had an issue with the vehicle's stop/start function. Several times the problem was verified by the dealers' technicians. Although the function worked as designed on the date of hearing, Respondent volunteered to have a field service engineer inspect the vehicle to ensure that the function is working as designed.

As such, the hearings examiner holds that Complainant has met his burden of proof to establish that there is a defect or condition in the vehicle that has not been repaired by Respondent or its authorized dealers. Respondent is under an obligation to repair the vehicle in order to conform it to Respondent's express warranty.

Respondent's bumper-to-bumper warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles. As of the date of hearing the vehicle's warranty was expired since the vehicle's mileage was 45,079. However, under Occupations Code § 2301.603(b), Respondent is still obligated to repair this issue, since it was raised prior to the expiration date of the warranty.

Complainant's request for repair relief is granted. Respondent is hereby ordered to perform any necessary repairs within 20 days from the date that the order becomes final to conform the vehicle to Respondent's bumper-to-bumper warranty.

### III. FINDINGS OF FACT

1. William Glen Davis (Complainant) purchased a new 2015 Ford F-150 on October 13, 2015, from Automax Ford (Automax) in Killeen, Texas with mileage of 234 at the time of delivery.
2. Respondent, Ford Motor Company, the manufacturer of the vehicle, provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle.
3. The vehicle's mileage on the date of hearing was 45,079.
4. At the time of the hearing, the bumper-to-bumper warranty for the vehicle had expired.
5. Complainant feels that the vehicle's stop/start function is not working properly despite several attempts at repairing the issue.
6. Prior to the filing of the complaint, Complainant took the vehicle to Respondent's authorized dealers for repair on the following dates because of his concerns regarding the stop/start function's operations:
  - a. April 8, 2016, at 8,940 miles;
  - b. May 4, 2016, at 10,060 miles;
  - c. May 8, 2016, at 10,727 miles;
  - d. October 21, 2016, at 17,317 miles;
  - e. November 1, 2016, at 17,709 miles;
  - f. April 26, 2017, at 26,386 miles;
  - g. July 5, 2017, at 30,694 miles;
  - h. August 14, 2017, at 32,659 miles;
  - i. September 11, 2017, at 33,962 miles; and
  - j. October 18, 2017, at 35,695 miles.
7. On April 8, 2016, May 4, 2016, and May 8, 2016, Automax's service technicians were able to resolve the issue and get the stop/start function to operate properly.
8. On October 21, 2016, Complainant took the vehicle to Hoffpauir, Inc. (Hoffpauir) in Lampasas, Texas for repair at which time the technician reset the vehicle's battery management system (BMS).

9. On November 1, 2016, Hoffpauir's service technician replaced the vehicle's battery and reset the BMS.
10. On April 26, 2017, Hoffpauir's service technician reset the vehicle's BMS.
11. On July 5, 2017, Complainant took the vehicle to Automax where the technician verified the concern, and attempted to contact Respondent's technical assistance center (TAC) for additional information on how to resolve the problem, but Complainant decided to take the vehicle before a response was received from the TAC.
12. On August 14, 2017, Automax's technician recharged the vehicle's battery to resolve the concern.
13. On September 11, 2017, Automax's technician reset the vehicle's BMS in order to resolve the concern.
14. On October 18, 2017, Automax's technician replaced the vehicle's battery monitoring sensor per instructions from Respondent's TAC.
15. On July 28, 2016, Complainant filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
16. On March 13, 2018, 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.
17. The hearing in this case convened and the record closed on June 27, 2018, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant, William Glen Davis, appeared and represented himself. Respondent was represented telephonically by Dionne Grace, Consumer Affairs Legal Analyst. Also testifying for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204(a) (Warranty Performance).

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 condition that is covered by Respondent's warranty and which has not been repaired. Tex. Occ. Code § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. 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 repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent is further **ORDERED** to **PERFORM ALL NECESSARY REPAIRS** within 20 days of the order becoming final to conform the vehicle to Respondent's bumper-to-bumper warranty.

**SIGNED June 29, 2018.**

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