

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0183397 CAF**

AMANDA FULLER,
 Complainant

v.

GENERAL MOTORS LLC,
 Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Amanda Fuller (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2017 Chevrolet Malibu. Complainant asserts that the vehicle is defective because the check engine light (CEL) illuminates periodically which has caused it to suffer from reduced power and caused it to hesitate when it's being driven. General Motors LLC (Respondent) argues that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired, does not have an existing warrantable defect, and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record was closed on June 19, 2018, in Fort Worth, Texas, before Hearings Examiner Edward Sandoval. Complainant, Amanda Fuller, represented herself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Irfaun Bacchus, Field Service Engineer, and John Metcalf, District Manager for After-Sales, testified for Respondent.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2017 Chevrolet Malibu from AutoNation Chevrolet North Richland Hills (AutoNation) in North Richland Hills, Texas on December 23, 2016, with mileage of 3 at the time of delivery.^{7,8} Respondent has provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.⁹ In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.¹⁰ On the date of hearing the vehicle's mileage was 29,702. At the time of hearing, the vehicle's warranty was still in effect.

Complainant testified that she first experienced a problem with the vehicle's CEL illuminating was in February of 2017. She took the vehicle to AutoNation for repair for the issue on February 8, 2017. The service technician indicated that it was a "false code setting."¹¹ Complainant was informed that Respondent was aware of the issue and was working on a solution for it. The

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁷ Complainant Ex. 2, Motor Vehicle Retail Installment Sales Contract dated December 23, 2016.

⁸ Respondent Ex. 1, Application for Texas Title dated December 23, 2016.

⁹ Respondent Ex. 2, New Vehicle Limited Warranty, p. 1.

¹⁰ *Id.*

¹¹ Complainant Ex. 3, Repair Order dated February 8, 2017.

technician cleared the code and returned the vehicle to Complainant. The vehicle's mileage on this occasion was 2,348.¹² Complainant did not receive a loaner vehicle as she waited at the dealer location for the work to be completed.

Complainant received a notice about a recall for the vehicle and took it to AutoNation on August 18, 2017, for the recall to be performed. The recall had to do with the vehicle's stochastic pre-ignition.¹³ The vehicle's mileage on this occasion was 14,920.¹⁴ Complainant waited at the dealer's location for the work to be completed and was not provided with a loaner vehicle.

On September 1, 2017, the vehicle's CEL illuminated. Complainant contacted an AutoNation representative and scheduled an appointment to repair the vehicle for September 6, 2017. When Complainant took the vehicle to AutoNation for the appointment the light was no longer on. Complainant was informed by a dealer representative that the problem was probably due to a misfire caused by bad gasoline. Complainant did not receive a repair order for the visit.

Complainant testified that on November 29, 2017, she was driving to work when the vehicle began to hesitate and jerk. A few minutes later the vehicle's CEL illuminated. Complainant took the vehicle to AutoNation for repair for the issue that same day. When Complainant arrived at the dealer's location, the CEL was still illuminated. AutoNation's service technician indicated that a stored trouble code indicated that there was an issue with the vehicle's catalytic converter, but there seemed to be no issue with it at the time of the repair attempt.¹⁵ The technician cleared the code and returned the vehicle to Complainant.¹⁶ The vehicle's mileage on this occasion was 20,300.¹⁷ Complainant waited at the dealer's location for the vehicle and did not receive a loaner vehicle while her vehicle was being repaired.

Complainant testified that the CEL illuminated again on December 23, 2017, when she was driving the vehicle to a location where she could do laundry. At the same, an error message appeared on the vehicle's instrument panel cluster saying that the vehicle's engine power was reduced. As a result, Complainant could not drive the vehicle above 20 mph. She parked the vehicle for a while and when she started it again, the CEL was still illuminated, but the engine power was no longer reduced. Complainant took the vehicle to AutoNation for repair for the issue on December 26, 2017. The vehicle's CEL was still on at the time. AutoNation's service

¹² *Id.*

¹³ Complainant Ex. 4, Repair Order dated August 18, 2017.

¹⁴ *Id.*

¹⁵ Complainant Ex. 5, Repair Order dated November 29, 2017.

¹⁶ *Id.*

¹⁷ *Id.*

technician verified the concern and replaced the vehicle's wiring harness to address the issue.¹⁸ The vehicle's mileage at the time was 21,482.¹⁹

Complainant stated that on January 10, 2018, she was driving the vehicle back to her home after taking a trip out of town when the CEL illuminated. Complainant took the vehicle to AutoNation for repair for the issue on January 11, 2018. AutoNation's service technician replaced the vehicle's front and rear O2 (oxygen) sensors in order to address the issue.²⁰ The vehicle's mileage on this occasion was 22,951.²¹ The vehicle was in AutoNation's possession for four (4) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

On January 29, 2018, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.²² Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 9, 2018.²³

On April 7, 2018, the vehicle's CEL illuminated once again. Complainant took the vehicle to AutoNation for repair for the issue on April 9, 2018. The CEL was still illuminated at the time she took the vehicle to be repaired. AutoNation's service technician replaced the vehicle's oxygen sensors in order to address the issue.²⁴ The vehicle's mileage was 26,480 at the time.²⁵ The vehicle was in AutoNation's possession for two (2) days. Complainant received a loaner vehicle while her vehicle was being repaired.

Complainant allowed Respondent to perform a final repair attempt on the vehicle on May 14, 2018. The final repair attempt was performed at AutoNation. Complainant testified that the vehicle was hesitating when she was driving it prior to the final repair attempt taking place. Respondent's field service engineer replaced the vehicle's catalytic converter during the final repair attempt.²⁶ The vehicle's mileage at the time was 28,128.²⁷ The vehicle was in AutoNation's possession for five (5) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

¹⁸ Complainant Ex. 6, Repair Order dated December 26, 2017.

¹⁹ *Id.*

²⁰ Complainant Ex. 7, Repair Order dated January 11, 2018.

²¹ *Id.*

²² Complainant Ex. 10, Letter to Chevrolet Motor Division dated January 29, 2018.

²³ Complainant Ex. 11, Lemon Law Complaint dated February 9, 2018.

²⁴ Complainant Ex. 12, Repair Order dated April 9, 2018.

²⁵ *Id.*

²⁶ Complainant Ex. 13, Repair Order dated May 14, 2018.

²⁷ *Id.*

Complainant testified that the vehicle doesn't feel right. She stated that on occasion it hesitates when she's driving it. Complainant also testified that the vehicle's CEL has not turned on since the repair performed on the vehicle on April 9, 2018.

During cross-examination, Complainant testified that she is the primary driver of the vehicle. The vehicle is in good shape and has not suffered any kind of internal or external damage to it. It's never been involved in an accident and has never been flooded. Complainant also stated that the CEL, when illuminated, has never flashed.

C. Respondent's Evidence and Arguments

1. Irfaun Bacchus' Testimony

Irfaun Bacchus, Field Service Engineer, testified for Respondent. He has 15 years' experience in the automotive industry. He has worked with Respondent in his present position for the past four (4) years. He is an Automotive Service Excellence (ASE) Master Certified Technician. He is also a GM World Class Certified Technician.

Mr. Bacchus testified that he performed a final repair attempt on the vehicle on May 14, 2018, at AutoNation. At the time of the repair, the CEL was not illuminated. Mr. Bacchus inspected the vehicle and checked for any stored codes on the vehicle's computers. There was one (1) stored code at the time. This code indicated that the vehicle's integral offset MAX was above Respondent's threshold for optimal catalyst efficiency.²⁸ (The code did not affect any driveability symptoms for the vehicle.)²⁹ As a result, he replaced the vehicle's catalytic converter. He did not perform any other repairs to the vehicle at the time.

Mr. Bacchus testified that there are a large number of items which can cause a vehicle's CEL to illuminate. Any issue with the vehicle's powertrain or that is engine related can potentially cause a vehicle's CEL to illuminate. The technician's responsibility at that point is to see what kind of trouble code has been stored on the vehicle's computers in order to determine how to repair the vehicle. Mr. Bacchus stated that if the CEL is illuminated and flashing, then damage could be caused to the vehicle's catalytic converter. There was never any allegation from Complainant that the CEL was flashing. It was always just a steady light.

²⁸ Respondent Ex. 4, Vehicle Legal Inspection dated May 15, 2018.

²⁹ *Id.*

Mr. Bacchus stated that he feels that the vehicle has been repaired. He stated that he would feel comfortable driving the vehicle on a daily basis.

2. John Metcalf's Testimony

John Metcalf, District Manager for After-Sales, testified for Respondent. Mr. Metcalf has 28 years' experience working in the automotive industry. He's worked for Respondent for 25 years and has been in his present position for the last seven (7) years.

Mr. Metcalf testified that the vehicle's oxygen sensors have been replaced twice. This is unusual for a new vehicle. However, he feels that the vehicle has been fully repaired and is operating as designed.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant's Lemon Law complaint indicated that intermittently the vehicle's CEL illuminates which causes the vehicle to hesitate and sometimes operate on reduced power.

Complainant purchased the vehicle on December 23, 2016, and presented the vehicle to Respondent's authorized dealer for repair due to the vehicle's CEL illuminating on the following dates: February 8, 2017; September 6, 2017; November 29, 2017; December 26, 2017; January 11, 2018; January 26, 2018; and April 9, 2018. The evidence indicates that the vehicle was repaired in April of 2018 and Complainant indicated that the vehicle's CEL has not illuminated since April 9, 2018. In addition, Complainant last saw the warning on the vehicle's instrument cluster that the vehicle is operating under reduced power prior to the repair that was performed on January 26, 2018.

Occupations Code § 2301.603 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.” Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer’s warranty. If a vehicle has been repaired then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a “lemon” the “nonconformity continues to exist” after the manufacturer has made repeated repair attempts.³⁰ In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer’s warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

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. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle’s mileage was 29,702 and it remains under the warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

III. FINDINGS OF FACT

1. Amanda Fuller (Complainant) purchased a new 2017 Chevrolet Malibu on December 23, 2016, from AutoNation Chevrolet North Richland Hills (AutoNation) in North Richland Hills, Texas, with mileage of 6 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty which provides coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first, and a separate powertrain warranty which provides coverage for five (5) years or 60,000 miles.
3. The vehicle’s mileage on the date of hearing was 29,702.
4. At the time of hearing the vehicle’s bumper-to-bumper warranty was still in effect.

³⁰ Tex. Occ. Code § 2301.605.

5. The vehicle's check engine light (CEL) has illuminated several times since Complainant purchased the vehicle resulting in the vehicle suffering from reduced power and hesitating when being driven.
6. Complainant took the vehicle for repair to AutoNation for the issues with the CEL illuminating, the vehicle suffering from reduced power and hesitating on the following dates:
 - a. February 8, 2017, at 2,348 miles;
 - b. September 6, 2017, at unknown miles;
 - c. November 29, 2017, at 20,300 miles;
 - d. December 26, 2017, 21,482 miles;
 - e. January 11, 2018, at 22,951 miles; and
 - f. January 26, 2018, at 23,766 miles.
7. On February 8, 2017, AutoNation's service technician determined that the vehicle's CEL had illuminated due to a false code setting. No repairs were performed at the time.
8. On August 18, 2017, AutoNation's service technician performed a recall for the vehicle which did not involve the CEL illuminating.
9. On September 6, 2017, AutoNation's service technician inspected the vehicle and felt that bad gasoline had caused a misfire in the engine which, in turn, caused the CEL to illuminate.
10. On November 29, 2017, AutoNation's service technician determined that a code for the catalytic converter was causing the CEL to illuminate, but the catalytic converter did not have an issue at the time.
11. On December 26, 2017, AutoNation's service technician replaced the main wiring harness to address the issue of the CEL illuminating.
12. On January 11, 2018, AutoNation's service technician replaced both of the vehicle's oxygen sensors in order to address the issue with the CEL illuminating.
13. On January 26, 2018, AutoNation's service technician replaced the vehicle's accelerator pedal in order to address the issue of the CEL illuminating.

14. On February 9, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. Complainant took the vehicle to AutoNation for repair on April 9, 2018, because the CEL illuminated; the vehicle's mileage was 26,480.
16. On April 9, 2018, AutoNation's service technician replaced both of the vehicle's oxygen sensors in order to resolve the issue of the CEL illuminating.
17. On May 14, 2018, Complainant took the vehicle to AutoNation for Respondent's final repair attempt; the vehicle's mileage was 28,128.
18. On May 14, 2018, Irfaun Bacchus, Field Service Engineer, replaced the vehicle's catalytic converter because the vehicle's integral offset MAX was above Respondent's threshold for optimal catalyst efficiency.
19. The vehicle's CEL has not illuminated since April 9, 2018.
20. The warning that the vehicle is suffering from reduced engine power has not reappeared since January 26, 2018.
21. On April 20, 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.
22. The hearing in this case convened and the record was closed on June 19, 2018, in Fort Worth, Texas, before Hearings Examiner Edward Sandoval. Complainant, Amanda Fuller, represented herself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Irfaun Bacchus, Field Service Engineer, and John Metcalf, District Manager for After-Sales, testified for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).

2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

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

SIGNED July 26, 2018.


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