

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0184769 CAF**

**MANUEL G. RODRIGUEZ,**  
**Complainant**

v.

**FORD MOTOR COMPANY,**  
**Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Manuel G. Rodriguez (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2016 Ford Taurus. Complainant asserts that the vehicle is defective because there is a popping/cracking noise from the left front of the vehicle and that there is a “push back” from the gas pedal when making a turn in the vehicle. Ford Motor Company (Respondent) argued that the vehicle does not have any defects and that no relief is warranted. The hearings examiner concludes that the vehicle 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 hearing record closed on May 15, 2018, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by his granddaughter, Jeanette Tovar, at the hearing. Respondent was represented telephonically by Bob Kendall, Dispute Resolution Specialist. Sayyed Asad Bashir, Automotive Technical Consultant, also 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.<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 manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of

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

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

<sup>3</sup> *Id.*

the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

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.<sup>6</sup>

## B. Complainant's Evidence and Arguments

Complainant purchased a new 2016 Ford Taurus from Mac Haik's Southway Ford (Southway) in San Antonio, Texas on September 20, 2016, with mileage of 60 at the time of delivery.<sup>7,8</sup> Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle and a five (5) year or 60,000 mile powertrain warranty. On the date of hearing the vehicle's mileage was 34,107. Respondent's warranties were still in effect at the time of hearing.

Jeanette Tovar, Complainant's granddaughter, is the primary driver of the vehicle. Ms. Tovar testified that she began to notice in July of 2017 that the vehicle was making a loud popping or cracking noise whenever she made a turn in either direction or backed up in the vehicle. On July 31, 2017, the vehicle refused to start. As a result, Ms. Tovar had the vehicle towed to Southway for repair. The vehicle refused to start because the battery was bad and needed replacement. While at Southway Ms. Tovar informed the service advisor that the vehicle was making a popping/cracking noise every time she made a turn or backed up in the vehicle. The dealer's service technician verified that an abnormal noise was coming from the vehicle's left front axle shaft.<sup>9</sup> The technician replaced the vehicle's left front axle shaft in order to resolve the issue.<sup>10</sup> The vehicle's mileage when Ms. Tovar took it to the dealer on this occasion was 19,515.<sup>11</sup> The

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<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</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>7</sup> Complainant Ex. 1, Vehicle Purchase Order dated September 20, 2016.

<sup>8</sup> Complainant Ex. 2, Odometer Disclosure Statement dated September 20, 2016.

<sup>9</sup> Complainant Ex. 3, Repair Order dated July 31, 2017.

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

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

vehicle was in Southway's possession for one (1) week. Ms. Tovar was not provided with a loaner or rental vehicle while the vehicle was being repaired.

Ms. Tovar stated that she continued to hear the loud popping/cracking noise from the vehicle when turning or backing up. She felt that the sound was as if something had broken in the vehicle. Ms. Tovar took the vehicle to Red McCombs Automotive Service Center (McCombs) in San Antonio for repair for the issue on October 2, 2017. McComb's service technician verified that the vehicle's steering rack was "binding/seizing."<sup>12</sup> The technician replaced the vehicle's electronic power assist steering (EPAS) system which is the vehicle's power steering rack.<sup>13</sup> The vehicle was in McComb's possession for three (3) days. Ms. Tovar was not provided with a loaner vehicle while the vehicle was being repaired. The mileage on the vehicle at the time of repair was 22,475.<sup>14</sup>

Ms. Tovar testified that the noise was worse after the October repair. In addition, she began to experience a "push back" from the vehicle's gas pedal when making a turn. Ms. Tovar decided to wait to take the vehicle to a dealer for repair in order to save up money to rent another vehicle, since she was not provided a loaner vehicle during the previous repair visits. Ms. Tovar took the vehicle to McComb for repair on January 29, 2018. On this visit, McComb's service technician removed and replaced the vehicle's two (2) front halfshafts in order to resolve the noise issue.<sup>15</sup> The vehicle was in McComb's possession for three (3) days. Ms. Tovar was not provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time of the repair was 28,079.<sup>16</sup>

Ms. Tovar stated that the vehicle continued to make a loud noise whenever she turned or backed up in the vehicle. Ms. Tovar contacted McComb's service manager to complain about the issue. He advised Ms. Tovar to return the vehicle to the dealer for repair. She returned the vehicle to McComb on February 6, 2018. McComb's technician removed and replaced the vehicle's right side motor mount in order to address the noise concern.<sup>17</sup> The vehicle was in the dealer's possession for one (1) week on this occasion. Ms. Tovar was provided with a loaner vehicle while the vehicle was being repaired. The mileage on the vehicle on this occasion was 28,407.<sup>18</sup>

Ms. Tovar felt that the vehicle was still making an unusual popping/cracking noise. Complainant thereupon mailed a letter to Respondent on February 13, 2018, in which he indicated his

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<sup>12</sup> Complainant Ex. 4, Repair Order dated October 2, 2017.

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

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

<sup>15</sup> Complainant Ex. 5, Repair Order dated January 29, 2018.

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

<sup>17</sup> Complainant Ex. 6, Repair Order dated February 6, 2018.

<sup>18</sup> *Id.*

dissatisfaction with the vehicle.<sup>19</sup> Since Ms. Tovar felt that the vehicle was not repaired, Complainant also filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 14, 2018.<sup>20</sup>

Ms. Tovar received a call from Respondent's representative after Respondent received the letter from Complainant. The representative asked Ms. Tovar to take the vehicle to McCombs to see if her concerns could be repaired to her satisfaction. Ms. Tovar took the vehicle to McCombs on March 12, 2018. The technician assigned to inspect the vehicle determined that the vehicle's front brakes were making an unusual noise.<sup>21</sup> The technician replaced the vehicle's right front brake caliper, the left and right caliper anchor brackets, and the left and right front brake shoes in order to resolve the issue.<sup>22</sup> The vehicle's mileage at the time was 29,864.<sup>23</sup> The vehicle was in McComb's possession until March 19, 2018.<sup>24</sup> Ms. Tovar was provided with a loaner vehicle while the vehicle was being repaired.<sup>25</sup>

Ms. Tovar stated that she has continued to hear a slight noise whenever she makes a turn or backs up when driving the vehicle. In addition, she feels a "push back" from the gas pedal when she makes a turn in the vehicle. She stated that this occurs every time she makes a turn or backs up in the vehicle. Ms. Tovar is afraid that she will lose control of the vehicle due to the unknown cause of the noise. She has never experienced a loss of control of the subject vehicle during the time that she's been driving it. Ms. Tovar feels that the noise is not normal and it is causing her concern.

During cross-examination, Ms. Tovar stated that she feels the push back from the tire when she makes a turn in the vehicle. She feels that the tire whips back straight and it feels like she's driving over a bump. She stated that this is an ongoing, constant issue.

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

#### **1. Bob Kendall's Testimony**

Bob Kendall, Dispute Resolution Specialist, testified for Respondent. He stated that Respondent's stance regarding the Lemon Law complaint is that Complainant is not entitled to repurchase or replacement of the vehicle because Complainant has not met the standard of the presumption that Respondent was provided with a reasonable number of repair attempts on the

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<sup>19</sup> Complainant Ex. 8, Letter to Ford Motor Company dated February 13, 2018.

<sup>20</sup> Complainant Ex. 7, Lemon Law Complaint dated March 14, 2018.

<sup>21</sup> Complainant Ex. 9, Repair Order dated March 12, 2018.

<sup>22</sup> *Id.*

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

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

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

vehicle. Mr. Kendall pointed out that Complainant's vehicle was not presented for repair for the complained of issues during the first year or 12,000 miles of ownership. The first repair attempt was performed after the vehicle had been driving over 19,000 miles.

A final repair attempt was performed on the vehicle on March 13, 2018, at McCombs by Darren Patillo, Respondent's Field Service Engineer (FSE). Mr. Patillo submitted a written report indicating that most of the noise that he heard when inspecting the vehicle was caused by loose items on the floorboard and in the trunk.<sup>26</sup> He also specified that he occasionally heard a slight pop noise when braking the vehicle in reverse and determined that the noise was coming from the right front brake.<sup>27</sup> Since the noise seemed to be coming from the vehicle's brake, Mr. Patillo replaced the vehicle's right front caliper, caliper bracket, and brake pads to resolve the issue.<sup>28</sup>

## 2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has been in the automotive industry for 19 years. He is an Automotive Service Excellence (ASE) Master Certified Technician. Mr. Bashir has worked for Respondent since 2007. He's been employed in his present position since 2009.

Mr. Bashir indicated that when diagnosing a vehicle for a problem a technician will isolate the system from where the problem is emanating. The technician will conduct a visual inspection of the components to ensure that they are where they're supposed to be and connected as designed. For noise issues, the technician will also use a device called chassis ears to attempt to isolate the noise to a specific area or component.

Mr. Bashir testified that the dealers' technicians had performed several repairs to the vehicle in an attempt to resolve Ms. Tovar's concerns regarding the popping/cracking noise that she was hearing. The technicians have replaced the vehicle's constant velocity (CV) axle, the power steering rack, the halfshafts, a motor mount, the front brake shoes, right front brake caliper, and the left and right front caliper anchor brackets. Mr. Bashir stated that the vehicle has floating brake calipers which can cause some noise in the vehicle. However, this is a design issue. The noise caused by the calipers can be more noticeable when backing up the vehicle.

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<sup>26</sup> Respondent Ex. 2, FSE Vehicle Inspection Report dated March 13, 2018.

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

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

**D. Vehicle Inspection and Test Drive**

During the test drive of the vehicle taken at the time of hearing, Ms. Tovar indicated that she could hear the popping/cracking noise from the vehicle and that she could feel the gas pedal push back against her foot when making a turn in the vehicle.

The hearings examiner also drove the vehicle during the test drive. He did not hear any abnormal or unusual noise from the vehicle during the drive. In addition, when driving the vehicle the hearings examiner did not experience a "push back" from the gas pedal.

**E. 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.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle.

The Lemon Law complaint filed in this hearing indicated that Complainant was concerned with a loud popping or cracking noise when making a turn or backing up in the subject vehicle. In addition, the complaint specified that there as a "push back" from the vehicle's gas pedal when making a turn.

It is understandable the buyer of a new vehicle would want the vehicle to operate as designed and not make any abnormal noise when it's being driven. In the present case, Complainant has provided testimony and evidence that the vehicle was making an abnormal noise when making a turn or backing up in the vehicle. However, the evidence also indicates that the vehicle has been repaired and that it does not currently create an unusual or abnormal noise. In addition, during the test drive taken at the time of hearing the hearings examiner did not experience the "push back" from the gas pedal that Ms. Tovar said that she was experiencing. The "push back" issue was never included on any of the repair orders submitted as evidence in the hearing nor was the issue mentioned in Complainant's letter mailed to Respondent on February 13, 2018.

The hearings examiner must hold that the vehicle has been repaired and at this point in time Complainant's concerns do not constitute a serious safety hazard in the vehicle as defined in Section 2301.601(4) of the Occupations Code. They are not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and they do not create substantial risk of fire or explosion.

In addition, the concerns do not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it's doubtful that the noise specified by Ms. Tovar would affect the purchase price, since most people would not even notice it. Also, it's doubtful that anyone driving the vehicle would notice any push back from the vehicle's gas pedal.

The hearings examiner must hold that there is no evidence of a defect with the vehicle and, as such, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 34,107 and it remains under warranty. Respondent is still under an obligation to repair any issues that arise that are covered by the vehicle's warranty.

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

### III. FINDINGS OF FACT

1. Manuel G. Rodriguez (Complainant) purchased a new 2016 Ford Taurus on September 20, 2016, from Mac Haik's Southway Ford (Southway) in San Antonio, Texas, with mileage of 60 at the time of delivery.
2. The vehicle's mileage on the date of hearing was 34,107.
3. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles and a powertrain warranty which provides coverage for five (5) years or 60,000 miles.
4. At the time of hearing the warranties for the vehicle were still in effect.
5. Jeanette Tovar, Complainant's granddaughter, is the primary driver of the vehicle.
6. In July of 2017, Ms. Tovar noticed that the vehicle was making a popping/cracking noise

whenever she made a turn in either direction or when backing up the vehicle and that she began to feel a "push back" from the gas pedal when making a turn in the vehicle.

7. Ms. Tovar took the vehicle to Respondent's authorized dealers in order to address the concerns regarding the noise and push back described in Findings of Fact #6 on the following dates:
  - a. July 31, 2017, at 19,515 miles;
  - b. October 2, 2017, at 22,475 miles;
  - c. January 29, 2018, at 28,079 miles; and
  - d. February 6, 2018, at 28,407 miles.
8. On July 31, 2017, Southway's service technician replaced the vehicle's left front axle shaft in order to address Complainant's concern.
9. On October 2, 2017, Red McCombs' Automotive SuperCenter's (McCombs) service technician replaced the vehicle's Electronic Power Assist Steering (EPAS) rack which is also referred to as the steering gear assembly.
10. On January 29, 2018, McCombs' service technician replaced two (2) front halfshafts in order to address the noise issue.
11. On February 6, 2018, McCombs' service technician removed and replaced the vehicle's right side motor mount in an effort to address Complainant's concerns regarding the complained of popping/cracking noise.
12. None of the repair orders entered as exhibits in the hearing included any reference to a "push back" from the vehicle's gas pedal when making a turn in the vehicle.
13. Complainant mailed a notice to Respondent on February 13, 2018, in which he indicated that he was dissatisfied with the vehicle.
14. Respondent's Field Service Engineer (FSE) performed an inspection of the vehicle on March 12, 2018, at the McCombs' location.
15. Respondent's FSE determined that the an abnormal noise was being created from the vehicle's brakes and replaced the vehicle's right front brake caliper, left and right caliper anchor brackets, and left and right front brake shoes.
16. On March 14, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

17. On April 9, 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.
18. The hearing in this case convened and the hearing record closed on May 15, 2018, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by his granddaughter, Jeanette Tovar, at the hearing. Respondent was represented telephonically by Bob Kendall, Dispute Resolution Specialist. Sayyed Asad Bashir, Automotive Technical Consultant, also 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 that the vehicle has an existing warrantable defect. Tex. Occ. Code § 2301.604(a).
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 replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED** May 30, 2018.

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