

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0187561 CAF**

**RUSSELL BUNGER,
Complainant**

v.

**JAGUAR LAND ROVER NORTH
AMERICA, LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Russell Bunger (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle distributed by Jaguar Land Rover North America, LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a currently existing warrantable defect. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on December 18, 2018, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Eric Hixon, attorney, represented the Complainant. The Complainant testified for himself. John Chambless, attorney, represented the Respondent. Jonathan Fournet, regional technical manager, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must currently exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

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

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹¹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹²

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner, someone on behalf of the owner, or the Department provided written notice of the alleged defect or nonconformity to the manufacturer;¹³ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

¹² *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1).

¹⁴ A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer satisfies the opportunity to cure requirement when the respondent allows a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2.

of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁵

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle" and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect.¹⁶ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁷

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainant cannot prevail where the existence of any required fact appears equally likely or unlikely.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

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

²⁰ "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short, plain statement of the factual matters asserted." TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) ("The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty."); TEX. OCC. CODE § 2301.204(d) ("A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

claim for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁴ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).²⁵

B. Summary of Complainant’s Evidence and Arguments

On March 14, 2017, the Complainant, purchased a new 2017 Jaguar XE from Land Rover Houston, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 10 miles on the odometer at the time of purchase. The vehicle’s limited warranty provides coverage for five years or 60,000 miles, whichever occurs first. On April 11, 2018, the Complainant provided a written notice of defect to the Respondent. On June 12, 2018, the Complainant filed a complaint with the Department alleging faults/failures with the hydraulic motor mounts and the ECO Stop does not function. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(2).

²² 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

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

²⁴ TEX. OCC. CODE § 2301.604.

²⁵ 43 TEX. ADMIN. CODE § 215.209(a).

Date	Miles	Issue
August 7, 2017	7,525	Rough vibration when starting
November 8, 2017	11,919	Rough vibration when starting
November 16, 2017	11,931	Vibration from engine
December 18, 2017	13,368	Stop/start fault
May 10, 2018	20,099	ECO (stop/start) not working
August 13, 2018	25,170	Stop/start inoperable, loud roaring engine noise
November 5, 2018	28,558	Auto stop/start not working, motor mount not working

The Complainant testified that when shifting into reverse or drive, he would hear a hydraulic-like sound (“elephant noise”) from the engine compartment and would feel vibration. He brought the subject vehicle for service on August 7, 2017. The motor mounts required replacement. He was provided something like a Range Rover as a loaner and before that, a Toyota Corolla rental for a day or two. He took the subject vehicle in again on November 8, 2017, after hearing the same noise. The service notes showed that the left motor mount was not working. The Complainant paid for his rental for this service visit. When picking up the vehicle, it made the hydraulic noise after shifting into gear, so the Complainant notified a service advisor who also heard the noise, subsequently diagnosed as caused by an obstruction from carbon build-up in the EGR cooler. The vehicle remained at the dealer until December 1 (2017). After this repair, the vehicle had intermittent problems with the ECO Stop/Start. The Complainant stated the ECO Stop functioned properly 98% of the time. However, at the August 13, 2018, repair visit, the vehicle needed a software update for the ECO Stop/Start. The Complainant affirmed that the May 7, 2018, and August 13, 2018, repair visits both related to ECO Stop/Start. The November 5, 2018, visit related to two issues: the ECO Stop/Start and what the Complainant believed was a motor mount issue, the hydraulic noise. After the repair, the ECO Stop/Start function increased to 97% but the motor mounts needed replacement. The Complainant believed that the motor mounts, or its components, were replaced at least three times. In one instance relating to the ECO Stop/Start, the dealer only had the vehicle for an hour or so and did not provide any service documentation but did provide a four or five-page diagnostic printout. The Complainant noted that he sent his notice to the Respondent two or three times because he did not get a return receipt back. The Complainant outlined the expenses for rentals and fuels, pointing out that the gas-powered rental and loaner vehicles achieved about half the mileage of the subject vehicle.

On cross-examination, the Complainant could not recall whether November 5th was designated for Mr. Fournet's inspection but did recall the November 27th date being scheduled. The Complainant confirmed that he was not apprised that someone from the Respondent would be present on November 5, 2018. He affirmed that he did not mention engine vibration or the motor mount at the August 2018 visit. The Complainant acknowledged that, other than the November 5, 2018, visit the motor mount issue was last addressed on November 16, 2017. He also confirmed that he considered the ECO Stop/Start to be working 100% if the engine would shut down at every stop and then restart. With respect to the hydraulic sound, the Complainant testified that he did not know why the repair orders did not reference the noise, explaining that he addressed the noise every time he took the vehicle in. The Complainant explained that he still paid a couple of hundred dollars out of pocket for rentals after reimbursement. He affirmed that the vehicle never left him stranded and that the acceleration, braking, and steering all functioned.

On redirect examination, the Complainant elaborated that he previously scheduled the November 5, 2018, service visit based on the noise from the vehicle.

C. Inspection

Upon inspection at the hearing before the test drive, the subject vehicle's odometer displayed 30,348 miles. During the test drive, the Complainant explained that the motor mount issue always occurred upon starting or when shifting into reverse or drive or when starting after an ECO Stop. The test drive ended with 30,354 miles on the odometer. The vehicle appeared to operate normally.

D. Summary of Respondent's Evidence and Arguments

Mr. Fournet testified that the motor mounts operated on a vacuum to change pressure and dampen, which related to ride quality. Though a failure of a motor mount would lead to vibration, the failure in this case was not structural and instead involved a vacuum leak as shown in the repair orders. When Mr. Fournet inspected the vehicle, he checked for diagnostic trouble codes. He found no powertrain issues and no visual signs of leaks. The vehicle did not exhibit vibrations when he test drove it. Mr. Fournet also affirmed that he did not experience any vibration due to the motor mounts during the test drive at the hearing. He confirmed that the ECO Stop/Start was not intended to shut off the engine every time the vehicle stopped. He elaborated that ECO Stop/Start will not

turn on if the outside temperature is too hot or too cold. Factors that affect the operation of ECO Stop/Start include: engine temperature, coolant temperature, electrical load, and climate control demand. For example, if the temperature outside is 100 degrees with the AC at maximum load, ECO Stop/Start will likely not activate. Also, ECO Stop/Start requires a certain level of pressure applied to the brake pedal before ECO Stop/Start will activate. If on a hill or slowing to a stop, the vehicle will not do an ECO Stop/Start. Because the brake booster relies on the engine for pressure, if the brake booster does not have enough pressure, the ECO Stop/Start will not shut the engine. Additionally, the ECO Stop/Start system will ensure that the battery is sufficiently charged before going into ECO Stop/Start. If an error occurs or a question of vehicle health arises, the ECO Stop/Start will not activate as a precaution. Mr. Fournet testified that the ECO Stop/Start worked as designed during his inspection, during the test drive at the hearing, and the Complainant's videos.

On cross-examination, Mr. Fournet explained that he believed the owner's manual provided a general explanation of the ECO Stop/Start function. He also stated that the motor mounts were already repaired and holding vacuum at the time he inspected the vehicle.

E. Analysis

To qualify for Lemon Law relief, the vehicle must have a currently existing defect covered by warranty (warrantable defect).²⁶ The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. The subject vehicle's warranty generally covers "repairs required to correct defects in factory-supplied materials or factory workmanship" and "any component covered by this warranty found to be defective in materials or workmanship will be repaired, or replaced."

²⁶ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁷ A manufacturing defect is generally an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which exists before manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.²⁸ In sum, the warranty only covers manufacturing defects and the Lemon Law does not apply to design characteristics or design defects. Even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

1. Motor Mounts

Although the motor mounts exhibited warrantable defects in the past, a preponderance of the evidence does not show that the motor mount issue currently exists. The Complainant's video exhibits do not appear to demonstrate the hydraulic-like elephant noise indicative of the motor mount issue. The post-repair motor mounts functioned normally when tested. Further the vehicle did not exhibit any unusual noise during the test drive at the hearing.

2. ECO Stop/Start

The Complainant testified that he believed the ECO Stop should stop the engine every time the vehicle stops. However, the record reflects that by design, the ECO Stop may not activate at every stop. In particular, the evidence shows that the engine will continue to run when necessary to ensure proper operation of vehicle functions. For example, the engine will continue to run to

²⁷ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

²⁸ In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

ensure that the brake booster has sufficient pressure to assist braking. Shutting down the engine at every stop, without regard to other vehicle functions may adversely affect the vehicle's performance. Instead, the vehicle is designed so that ECO Stop will not activate to avoid adversely affecting vehicle functions. Accordingly, the non-activation of ECO Stop is not a defect but an intended design characteristic necessary for the proper operation of the vehicle.

III. Findings of Fact

1. On March 14, 2017, the Complainant, purchased a new 2017 Jaguar XE from Land Rover Houston, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 10 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides coverage for five years or 60,000 miles, whichever occurs first.
3. On April 11, 2018, the Complainant provided a written notice of defect to the Respondent.
4. On June 12, 2018, the Complainant filed a complaint with the Department alleging faults/failures with the hydraulic motor mounts and the ECO Stop does not function.
5. On September 13, 2018, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the factual matters asserted.
6. The hearing in this case convened on December 18, 2018, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Eric Hixon, attorney, represented the Complainant. The Complainant testified for himself. John Chambless, attorney, represented the Respondent. Jonathan Fournet, regional technical manager, testified for the Respondent.
7. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
August 7, 2017	7,525	Rough vibration when starting
November 8, 2017	11,919	Rough vibration when starting
November 16, 2017	11,931	Vibration from engine
December 18, 2017	13,368	Stop/start fault
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August 13, 2018	25,170	Stop/start inoperable, loud roaring engine noise
November 5, 2018	28,558	Auto stop/start not working, motor mount not working

8. The vehicle's odometer displayed 30,348 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing.
10. The vehicle operated normally during the test drive at the hearing.
11. ECO Stop/Start stops the engine from running to conserve fuel at a standstill and starts the engine when depressing the accelerator.
12. By design, ECO Stop/Start may not always activate. ECO Stop/Start will not activate when the engine is required to remain running to support vehicle functions.
13. The motor mount issue did not recur after the latest repair visit on November 5, 2018.

IV. Conclusions of Law

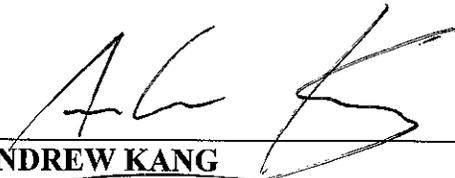
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainant filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).

6. The Complainant's vehicle does not qualify for replacement or repurchase or warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.604(a) and 2301.204.
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

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

SIGNED February 19, 2019



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