

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0002004 CAF**

**ERMA LEWIS,
Complainant**

v.

**NISSAN NORTH AMERICA, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Erma Lewis (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2017 Nissan Rogue. Complainant listed several concerns with the vehicle on her Lemon Law complaint. These concerns were: an intermittent clicking noise from the front of the vehicle; the brakes grinding when she steps on the brake pedal; brake dust on the vehicle; the engine idles rough and creates a vibration; the grill is warped; the passenger seat sensor malfunctions; the vehicle veers to the left when she's driving it; the rear cup holder is damaged; the seatbelt is chirping; and the steering wheel makes a screeching sound when she makes a turn in the vehicle. Nissan North America, Inc. (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 initially convened on March 20, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Erma Lewis, represented herself at the hearing. Complainant's fiancé, Aguedo de Jesus Alfaro, also testified telephonically for Complaint. Respondent was represented by Neal Barnes, Dealer Technical Specialist. A continuance in the hearing was conducted telephonically on April 18, 2019. Present at the continuance was Complainant representing herself. Rafael Mariduena, Dealer Technical Specialist, represented Respondent. The hearing record was closed on April 18, 2019.

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 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 the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner.⁶

¹ Tex. Occ. Code § 2301.604(a).

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.

B. Complainant's Evidence and Arguments

1. Erma Lewis' Testimony

Complainant purchased a new 2017 Nissan Rogue from Tom Peacock Nissan (Peacock) in Houston, Texas on October 2, 2017, with mileage of 684 at the time of delivery.^{7,8} Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 22,100. Respondent's warranty was still in effect at the time of hearing.

Complainant testified that she has had several issues with the vehicle. Complainant listed on her Lemon Law complaint the following issues: clicking in the front wheel area of the vehicle, brakes grinding, severe brake dust on the vehicle, the vehicle idling rough and excessively vibrating, the collision sensor warning light illuminating, front grill is warped, the passenger seat sensor illuminating, the vehicle veering to the left when she's driving, a cup holder issue, the seatbelt chirping from the passenger window.⁹ Complainant testified during the hearing that most of the issues have been resolved. She stated that the only issues that she's currently experiencing are the clicking noise from the front of the vehicle and rough idling. Complainant also added that the vehicle's steering wheel squeaks when she's turning the wheel. This issue was not included on the Lemon Law complaint.

Complainant stated that she began to notice in October of 2017 that the vehicle's brakes were squeaking and that there was brake dust on the vehicle. On October 26, 2017, Complainant took the vehicle to Peacock for repair. Peacock's service technician replaced all four (4) brake pads in order to resolve the issue.¹⁰ The vehicle's mileage when Complainant took it to the dealer on this occasion was 1,900.¹¹ The vehicle was in Peacock's possession overnight. Complainant received a loaner vehicle while her vehicle was being repaired.

Complainant continued to hear the brakes grinding after the repair. She returned the vehicle to Peacock for repair on January 24, 2018. Complainant raised four issues at the time: the brakes grinding, the rear armrest and cup holder was loose, the passenger side door was making a chirping noise, and the USB intermittently not working. Peacock's service technician was unable

⁷ Complainant Ex. 2, Motor Vehicle Retail Installment Sales Contract dated October 2, 2017.

⁸ Complainant Ex. 3, Odometer Disclosure Statement dated October 2, 2017.

⁹ Complainant Ex. 1, Lemon Law Complaint Form Received December 12, 2018 by the Office of Administrative Hearings.

¹⁰ Complainant Ex. 4, Repair Order dated October 26, 2017.

¹¹ *Id.*

to duplicate or verify Complainant's concerns about the brakes grinding, the chirping noise, or the USB not working.¹² He did order a replacement part for the vehicle's armrest and cup holder.¹³ The mileage on the vehicle was 7,437.¹⁴ The vehicle was in Peacock's possession until January 30, 2018. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On February 15, 2018, Complainant took the vehicle back to Peacock to have the armrest repaired. During the repair visit, the technician replaced the vehicle's rear arm rest and cup holder assembly and ordered a front grill, since the vehicle's front grill had warped and was delaminating.¹⁵ Complainant waited for the vehicle during this repair visit. The mileage on the vehicle at the time Complainant turned it over Peacock was 8,379.¹⁶

Complainant testified that the vehicle began to idle rough and that the brakes continued to squeal when she stepped on the brake pedal. She took the vehicle to Peacock for repair on March 5, 2018. Complaint had several issues with the vehicle that she wanted addressed, these were: the warped front grill, the chirping noise from the passenger window, the vehicle was idling rough and sounding rough on a cold start, and the brakes squealing.¹⁷ Peacock's service technician replaced the vehicle's front grill and adjusted the vehicle's idle to deal with the rough idle and sounding rough issues.¹⁸ In addition, the technician determined that the vehicle's rear brake rotor was bent, so he resurfaced the rear rotors.¹⁹ However, the technician could not duplicate the issue regarding the chirping noise and no repair was performed for the issue.²⁰ The vehicle was in the dealer's possession until March 8, 2018.²¹ Complainant was provided with a loaner vehicle while her vehicle was being repaired. The mileage on the vehicle when she delivered it to Peacock on this occasion was 9,230.²²

Complainant began to hear a popping noise from the front of the vehicle. In addition, she felt that the vehicle was still idling rough. She took the vehicle to Peacock for repair for the popping noise and rough idle issues on March 20, 2018. Peacock's technician verified both concerns.²³ He replaced both of the vehicle's strut assemblies, the coil, mount, boot, and dampener in order

¹² Complainant Ex. 5, Repair Order January 24, 2018.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 6, Repair Order February 15, 2018.

¹⁶ *Id.*

¹⁷ Complainant Ex. 7, Repair Order dated March 5, 2018.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Complainant Ex. 8, Repair Order dated March 20, 2018.

to address the issue regarding the popping noise.²⁴ In addition, the technician adjusted the vehicle's idle to address the rough idle issue.²⁵ Complainant was provided with a loaner vehicle while her vehicle was being repaired. The vehicle was in Peacock's possession until March 26, 2018. The vehicle's mileage on this occasion was 9,819.²⁶

A few days later, the vehicle's seatbelt warning light then illuminated and would not turn off. Complainant took the vehicle to Peacock for repair on April 11, 2018, for the issue and because she felt that the vehicle would pull to the right when she was driving it. Peacock's service technician reset the vehicle's seatbelt sensor to address the issue of the warning light illuminating.²⁷ In addition, he checked the vehicle's alignment and determined it was fine.²⁸ The vehicle's mileage on this occasion was 10,446.²⁹ The vehicle was in Peacock's possession overnight. Complainant received a loaner vehicle while her vehicle was being repaired.

On May 4, 2018, Complainant had an arbitration hearing with Respondent through the Better Business Bureau (BBB). The BBB arbitrator ordered Respondent to repair the issues regarding "inordinate brake dust on all four wheels" and the cup holder on the rear seat which was loose.³⁰ Complainant rejected the arbitrator's decision.³¹

Complainant continued to feel that the vehicle was idling rough and hesitating. She took the vehicle to Peacock for repair on May 23, 2018. Complainant raised the following issues at the time: the vehicle was idling rough and vibrating, the brakes were squealing and she was seeing brake dust on the vehicle, the rear seat cup holder was loose, she felt that the vehicle was hesitating after slowing down at highway speeds, and the front collision warning light had illuminated for no reason. Peacock's service technician determined that the engine mount was misaligned which was causing the rough idle and vibration.³² He realigned the mount in order to address the issue.³³ He did not perform any repair to the brakes for the grinding noise issue.³⁴ The technician replaced the rear cup holder assembly, as the hook on the bracket was damaged.³⁵ There was no repair performed for the hesitation issue.³⁶ Finally, the technician replaced the vehicle's distance sensor assembly to address the issue of the collision warning light

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complainant Ex. 10, Repair Order dated April 11, 2018.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Complainant Ex. 15, Better Business Bureau Arbitration packet, p. 9.

³¹ *Id.*, p. 7.

³² Complainant Ex. 9, Repair Order dated May 23, 2018.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

illuminating.³⁷ The vehicle's mileage at the time was 12,882.³⁸ The vehicle was in Peacock's possession until June 11, 2018. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that the vehicle did drive better in June of 2018. However, Complainant took the vehicle to Robbins Nissan (Robbins) in Humble, Texas for repair on October 2, 2018. Complainant raised the following issues at the time: there was a clicking sound when shifting the vehicle's transmission from drive to reverse, the vehicle was idling rough, the brakes were grinding, the car was not accelerating adequately, and the audio screen was cracked.³⁹ Robbins' technicians were not able to find or duplicate any of the concerns, except for the cracked audio screen. The vehicle was in Robbins' possession for the day. The vehicle's mileage at the time was 17,919.⁴⁰

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on October 10, 2018.⁴¹ On October 19, 2018, Complainant mailed a letter to Respondent advising them that she was dissatisfied with the vehicle.⁴²

Complainant began to hear a clicking noise whenever she turned left or right in the vehicle and when she drove in reverse. On October 10, 2018, Complainant took the vehicle to Peacock for repair for the issue. She also raised the issue of the cracked audio screen at the time. Peacock's technician verified the clicking noise concern.⁴³ He then replaced the vehicle's left front strut coil spring, left upper mount, left strut mount bearing, and left dust boot to resolve the issue.⁴⁴ After the repair, the technician continued to hear a noise from the front of the vehicle and replaced the vehicle's left front wheel bearing assembly.⁴⁵ In addition, the technician replaced the cracked audio screen.⁴⁶ The vehicle's mileage at the time was 18,249.⁴⁷ The vehicle was in Peacock's possession until November 8, 2018. Complainant was not provided a loaner vehicle while her vehicle was being repaired.

Complainant continued to feel a vibration when driving the vehicle. She took the vehicle to Peacock for repair on November 29, 2018. Neal Barnes, Respondent's Dealer Technical

³⁷ *Id.*

³⁸ *Id.*

³⁹ Complainant Ex. 11, Repair Order dated October 2, 2018.

⁴⁰ *Id.*

⁴¹ Complainant Ex. 1, Lemon Law Complaint Form.

⁴² Complainant Ex. 12, Letter to Nissan North America dated October 19, 2018.

⁴³ Complainant Ex. 13, Repair Order dated October 10, 2018.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

Specialist, inspected the vehicle and determined that a wheel rim on one of the vehicle's tires was damaged which was causing the vibration. The wheel was replaced at the time. The vehicle's mileage at the time was 18,553.⁴⁸ The vehicle was in Peacock's possession for the day.

Complainant stated that she is frustrated with the vehicle. She suffers from anxiety and emotional distress due to the problems that she's experienced with it. Complainant feels that the vehicle is a safety risk. She's lost a lot of time from work as a result of having to take the vehicle in for repair so many times. She also stated that most of the issues have been repaired and that she no longer is experiencing problems with the vehicle's brakes. She only has three (3) complaints at this time: the clicking noise, the rough idle, and an intermittent squeak in the steering wheel when she turns when driving.

2. Aguedo de Jesus Alfaro's Testimony

Aguedo de Jesus Alfaro, Complainant's fiancé, testified for Complainant. Mr. Alfaro testified that he never drove the vehicle but has been a passenger while Complainant drove. Mr. Alfaro also testified to hearing the clicking noise from the vehicle while parking and when the vehicle was in reverse. He last heard the clicking noise a week before the hearing while the vehicle was in reverse and being parked. With respect to how loud the noise was, Mr. Alfaro described it as a six on a scale of one through ten. The steering wheel also shook and would pull to the side. The steering wheel made a screeching noise when turning out of the parking lot the last time the vehicle was used. Mr. Alfaro took the vehicle in for repair with Complainant every time the vehicle was taken for repair.

On November 29, 2018, the vehicle was taken in for repair at the dealership. During the repair the vehicle was taken on a test drive. During the test drive the vehicle shook while driven. Upon inspection after the test drive, a rim was discovered to be warped and was subsequently replaced. However, Complainant and Mr. Alfaro returned to the dealership the same day because the tire pressure light in the vehicle turned on. The dealership took readings of the vehicle and then took the vehicle on another test drive. The vehicle was left at the dealership between two to four hours for repair. After repair the tire pressure light was off.

⁴⁸ Complainant Ex. 14, Repair Order dated November 29, 2018.

C. Respondent's Evidence and Arguments

1. Neal Barnes' Testimony

Neal Barnes, Dealer Technical Specialist, testified for Respondent. He has been in the automotive industry for 42 years. He's always worked in the technical side of the industry. Mr. Barnes has worked for Respondent for the past 20 years. He's been in his current position since 2004. Mr. Barnes was an Automotive Service Excellence (ASE) Master Certified Technician, but let his certification lapse in 2018.

Mr. Barnes stated that he performed a final repair attempt on the vehicle in November of 2018. He met Complainant and Evan Whitis, Case Advisor for the Department, at Peacock on November 29, 2018. They conducted a road test on the vehicle at the time and felt the vehicle vibrating. An inspection of the vehicle revealed that a wheel was damaged and had a "wobble" to it. They replaced the damaged wheel in order to address the vibration issue. Mr. Barnes does not recall being informed about a popping sound coming from the front of the vehicle during the inspection.

Mr. Barnes stated that he also inspected the vehicle on May 23, 2018, at Peacock. This was after the BBB arbitration hearing. Mr. Barnes had the technician adjust the upper engine mount on the passenger side in order to resolve the rough idling issue. He also had them increase the idle speed according to a service bulletin provided by Respondent. Mr. Barnes test drove the vehicle at the time and did not notice that the vehicle hesitated when slowing down at highway speeds. He felt that the vehicle was operating as designed in that respect. Regarding the brakes squealing, Mr. Barnes testified that occasional brake squeals are normal. Sometimes corrosion can build up on the brake rotors due to the humidity in the area. He stated that this is also normal. He also stated that Complainant has never raised any performance issues with the brakes. Also, during the May repair visit, Mr. Barnes had the technician replace the vehicle's distance warning sensor to address the issue of the collision warning light illuminating.

Mr. Barnes stated that the vehicle's brake pads have been replaced twice. He stated that this was the dealer's attempt to address Complainant's concerns. Mr. Barnes stated that it is not common for the brakes of a vehicle with such low mileage to be replaced twice.

2. Rafael Mariduena's Testimony

Rafael Mariduena, Dealer Technical Specialist, also testified for Respondent. He stated the check engine light may not turn off because the fuel cap is not properly secured. Failure to properly

secure the fuel cap can result in the vehicle's computer interpreting the data as an emission leak. Mr. Mariduená qualified that without an inspection no one could know for sure.

Mr. Mariduená testified that the clicking noise that occurs while starting and reversing the vehicle are the brake pads shifting in the caliper. When the brake is applied there is a slight clearance with the brake caliper and sometimes the brake pads will shift in the brake cage, which results in a clicking noise. Mr. Mariduená stated that to stop the clicking noise the vehicle will need to have brake hardware replaced.

On cross examination, Mr. Mariduená, testified that to diagnosis the vehicle's clicking problem he used videos sent to him from Complainant. However, he did not look at any of the vehicle's service records while forming his conclusion.

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 raised several issues on her Lemon Law complaint, these were: clicking in the front wheel area of the vehicle, brakes grinding, severe brake dust on the vehicle, the vehicle idling rough and excessively vibrating, the collision sensor warning light illuminating, front grill is warped, the passenger seat sensor illuminating, the vehicle veering to the left when she's driving, a cup holder issue, the seatbelt chirping from the passenger window. Complainant's own testimony was that most of these issues have been repaired and that she only had three (3) concerns at the time of hearing: the clicking noise, the vehicle's rough idle, and an intermittent screeching noise from the vehicle's steering wheel when turning the vehicle.

1. Clicking noise from the front of the vehicle

Complainant indicated that she was concerned with a clicking noise that seems to emanate from the front of the vehicle. She attempted to recreate the noise during the test drive take at the time of hearing. There may have been a slight clicking noise. If so, it was hard to hear and the hearings

examiner could not determine if it was road noise or noise from the vehicle. In any event, the noise, in and of itself, does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and it does not create substantial risk of fire or explosion. In addition, the noise was so minimal that it does not substantially impair the use or market value of the vehicle. A potential buyer of the vehicle may not even notice the noise. In addition, the noise does not affect the usage of the vehicle. As such, the hearings examiner must hold that this issue does not provide grounds to order repurchase or replacement of the vehicle.

2. Rough Idle

The evidence presented at the hearing did not support the allegation that the vehicle idles rough. Even if there were evidence of such a rough idle, this would not be grounds to order repurchase or replacement of the vehicle as it does not create a serious safety hazard and it does not *substantially* impair the use or market value of the vehicle. This issue also does not provide grounds to order repurchase or replacement of the vehicle.

3. Steering Wheel Screeching

This issue was not raised on the Lemon Law complaint. It was first raised at the time of hearing. Therefore, the hearings examiner cannot rule on the issue. If the issue continues to manifest, Complainant should contact Respondent's authorized dealer to find out what her options are in regard to the issue.

On the date of hearing, the vehicle's mileage was 22,100 and it remains under warranty. As such, Respondent is still under an obligation to repair any other 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. Erma Lewis (Complainant) purchased a new 2017 Nissan Rogue on October 2, 2017, from Tom Peacock Nissan (Peacock) in Houston, Texas, with mileage of 684 at the time of delivery.

2. The manufacturer of the vehicle, Nissan North America, Inc. (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.
3. The vehicle's mileage on the date of hearing was 22,100.
4. At the time of hearing the bumper-to-bumper warranty for the vehicle was still in effect.
5. Complainant's concerns as listed on the Lemon Law complaint were: an intermittent clicking noise from the front of the vehicle; the brakes grinding when she steps on the brake pedal; brake dust on the vehicle; the engine idles rough and creates a vibration; the grill is warped; the passenger seat sensor malfunctions; the vehicle veers to the left when she's driving it; the rear cup holder is damaged; and the seatbelt is chirping.
6. On the date of hearing, Complainant's concerns were the intermittent clicking noise from the front of the vehicle, the vehicle idling rough, and a screeching noise from the steering wheel whenever she makes a turn in the vehicle.
7. Complainant took the vehicle to Respondent's authorized dealers in order to address her various concerns with the vehicle on the following dates:
 - a. October 26, 2017, at 1,900 miles;
 - b. January 24, 2018, at 7,437 miles;
 - c. February 15, 2018, at 8,379 miles;
 - d. March 5, 2018, at 9,230 miles;
 - e. March 20, 2018, at 9,819 miles;
 - f. April 11, 2018, at 10,446 miles;
 - g. May 23, 2018, at 12,882 miles;
 - h. October 2, 2018, at 17,919 miles; and
 - i. October 10, 2018, at 18,249 miles.
8. On October 26, 2017, Peacock's service technician inspected the vehicle for excessive brake dust on the vehicle and the brakes squealing. The technician replaced both the front and rear brake pads in order to resolve the issue.
9. On January 24, 2018, Peacock's service technician addressed four (4) issues that were raised by Complainant: the vehicle's brakes grinding, rear armrest with cup holders was loose, a chirping noise by the passenger side's door, and USB would intermittently stop working.

10. During the service visit described in Findings of Fact #9, the technician was unable to duplicate the concerns regarding the brakes grinding, the chirping noise, and the USB not working. The technician ordered a part to replace the rear armrest and cup holder in order to repair that issue.
11. On February 15, 2018, Peacock's service technician replaced the vehicle's cup holder and special ordered a new front grill for the vehicle, since the original was warped and delaminating.
12. On March 5, 2018, Complainant raised five (5) issues with the vehicle: the vehicle's front grill was warped, she was hearing a chirping noise from the front passenger window, the vehicle was idling rough, the vehicle sounded rough on a cold start, and the vehicle's brakes were squealing.
13. During the service visit described in Findings of Fact #12, Peacock's service technician replaced the vehicle's grill, adjusted the vehicle's base idle to resolve the rough idle and rough sounding issues, resurfaced the rear brake rotors to resolve the brakes squealing issue, and was not able to duplicate the issue with the chirping noise.
14. On March 20, 2018, Peacock's service technician replaced both strut assemblies, the vehicle's coil, mount, boot, and dampener in order to resolve Complainant's concern about hearing a popping noise whenever the vehicle turned or was driven in reverse. In addition, the technician adjusted the vehicle's engine idle because there was excessive vibration when coming to a stop in the vehicle.
15. On April 11, 2018, Peacock's service technician performed a reset on the seat belt sensor in order to address an issue with the seat belt warning light not turning off. In addition, the technician checked the vehicle's alignment (and determined it was fine) in order to address an issue of the vehicle pulling to the right when she was driving.
16. On May 23, 2018, Complainant raised five (5) issues with the vehicle: the vehicle was idling rough and vibrating, the brakes were squealing and leaving brake dust on the vehicle, the cup holder in the back was loose, the vehicle was hesitating after slowing down at highway speeds, and the vehicle's front collision warning light illuminated for no reason.
17. During the service visit described in Findings of Fact #16, Peacock's service technician realigned the vehicle's engine mount in order to address the issue with the rough idle and vibration, performed no repair to the brakes, replaced the rear cup holder assembly,

performed no repair for the vehicle's hesitation, and replaced the vehicle's distance sensor.

18. On October 2, 2018, Complainant took the vehicle to Robbins Nissan (Robbins) in Humble, Texas and raised five (5) issues with the vehicle. The issues raised by Complainant were: when shifting the transmission from drive to reverse Complainant would hear a clicking noise, the vehicle was idling rough, the brakes were grinding, the vehicle lacked acceleration on the highway, and the audio screen was cracked.
19. During the service visit described in Findings of Fact #18, Robbins' service technician could not duplicate any of the concerns raised by Complainant. However, the technician did order a new audio screen for the vehicle to replace the cracked one.
20. On October 10, 2018, Peacock's service technician replaced the vehicle's left front strut coil spring, left upper mount, left strut mount bearing, and left dust boot to resolve an issue where Complainant was hearing a clicking noise when driving and turning either right or left. After the repair, the technician continued to hear a noise from the front of the vehicle and replaced the vehicle's left front wheel bearing assembly.
21. On October 10, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
22. On October 19, 2018, Complainant mailed a letter to Respondent advising them of her dissatisfaction with the vehicle.
23. On November 29, 2018, Respondent performed a final repair attempt on the vehicle at Peacock.
24. Neal Barnes, Dealer Technical Specialist, and Evan Whitis, Case Advisor for the Department, performed the inspection described in Findings of Fact #23.
25. During the inspection, Mr. Barnes and Mr. Whitis test drove the vehicle and felt the vehicle vibrating. An inspection of the vehicle revealed that a wheel was damaged and had a "wobble" to it. They replaced the damaged wheel in order to address the vibration issue.
26. On December 14, 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.

27. The hearing in this case initially convened on March 20, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Erma Lewis, represented herself at the hearing. Complainant's fiancé, Aguedo de Jesus Alfaro, also testified telephonically for Complaint. Respondent was represented by Neal Barnes, Dealer Technical Specialist. A continuance in the hearing was conducted telephonically on April 18, 2019. Present at the continuance was Complainant representing herself. Rafael Mariduena, Dealer Technical Specialist, represented Respondent. The hearing record was closed on April 18, 2019.

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 June 18, 2019.



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