

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0002106 CAF**

LLOYD SRUBAR,
Complainant

v.

GENERAL MOTORS LLC,
Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Lloyd Srubar (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 manufactured by General Motors LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a 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 August 30, 2019, in Rosenberg, Texas, before Hearings Examiner Andrew Kang, and the record closed on September 27, 2019. John Perches, attorney, appeared for the Complainant. Clifton Green, business resource manager, appeared 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 respondent 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 respondent, (2) an opportunity to cure by the respondent, 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 respondent;¹³ (2) the respondent 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 of: the warranty's

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.

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 before the warranty’s expiration.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 must 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 forming the basis of the claim

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.”).

for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to hearing 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 However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁶

B. Summary of Complainant’s Evidence and Arguments

On May 15, 2017, the Complainant, purchased a new 2017 GMC Sierra 3500 HD from John Wiesner, Inc., a franchised dealer of the Respondent, in Conroe, Texas. The vehicle had 57 miles on the odometer at the time of purchase. The vehicle’s limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first. On October 12, 2018, the Complainant provided a written notice of defect to the Respondent. Also on October 12, 2018, the Complainant filed a complaint with the Department alleging that “warning lights repeatedly illuminate and remain illuminated.”

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(3).

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).

²⁶ 43 TEX. ADMIN. CODE § 215.208(b)(1).

In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
April 10, 2018	14,151	Service engine light (light bar wiring covering ambient temperature sensor); Stabilitrak message, ABS message (right rear wheel speed sensor), transmission slams when shifts
April 23, 2018	16,130	ABS message (right rear wheel sensor); service engine light (wiring covering ambient temperature sensor)
April 25, 2018 April 30, 2018	17,162	Traction control message (left rear wheel speed sensor), ABS message
May 9, 2018 May 10, 2018	19,452	Check engine light (no problem found); low coolant message (coolant level)
June 5, 2018	25,276	Check engine light (mass air flow sensor and temperature sensor); Stabilitrak message (right rear speed sensor)
June 25, 2018 July 2, 2019	28,997	Service engine light (mass air flow sensor); Stabilitrak message (right rear speed sensor)
July 25, 2018	30,276	Check engine light (nitrogen oxide sensor)
July 30, 2018 August 2, 2018	30,662	Check engine light (nitrogen oxide sensor)
August 6, 2018 August 9, 2018	31,118	Check engine light (charge air cooler outlet)
August 27, 2018 October 18, 2018	32,225	Check engine lamp (turbocharger, EGR, exhaust pipe, fuel injectors)
June 27, 2019 July 19, 2019	54,247	Check engine lamp (excessive soot on mass air flow sensor and MAP sensor), ABS lamp, traction control lamp

The Complainant testified that the repair invoice at 14,151 miles related to the conditions at issue in this case and represented the first indication of the problems with the subject vehicle. The Complainant testified that, while driving, all the dash lights popped on. He affirmed that three warning lights came on and the transmission would slam between gears. The Complainant confirmed that the subject vehicle was a commercial vehicle used to haul equipment and trailers. He explained that with a check engine light, the vehicle would need to be taken in as soon as possible, but with an ABS (antilock brake system) warning light, the vehicle would need to be fixed right away. If the vehicle has the ABS light on during an inspection, the vehicle would be put out of service and parked until fixed. The vehicle was brought in at 16,130 miles for the ABS. At 17,162 miles, the vehicle stayed at the dealer until April 30, 2018, for ABS and Stabilitrak (traction control system). At 19,452 miles, the Complainant dropped off the vehicle at a dealer in Wyoming for a check engine light. Also at this visit, the dealer tried to find a coolant leak. When

arriving at Wyoming, an alternator cable had come loose and the insulation melted off. At the 28,997 mile repair visit in June 2018, the Complainant did not get the vehicle back until July 2, 2018. The sensors required replacement again. The vehicle went in at 31,118 miles for another check engine light, believed to be due to a leak in the intercooler. The Complainant did not get the vehicle back from the 32,225 mile repair visit until October 18, 2018. The Complainant did not receive a loaner vehicle during the 54 days the subject vehicle stayed at the dealer. During the visit for the manufacturer's inspection, the sensors were replaced. The Complainant affirmed that the vehicle was only used as needed and stayed in a barn most of the time.

On cross-examination, the Complainant testified that aftermarket LED lights were on the vehicle after the bumper was installed on March 5, 2018. He confirmed that the first relevant concern occurred after the installation of the LED lights. The Complainant acknowledged the impact of the aftermarket changes on the bumper, fuel mileage, and charging time. He did not check whether anything else would be affected. He pointed out that technicians cited the LED light wiring covering the temperature sensor as causing the check engine light but the wire was not touching the temperature sensor and was in front of it with factory wire wrapped around the sensor. The Complainant did not believe the warning lights related to the LED lights because the lights are not tied to the computer system and are separate on an accessory plug. With respect to the rear wheel sensors, he explained that traveling down the road, the LED lights are off, so that there is no voltage and would not interfere with the sensors. When asked if the ABS or Stabilitrak lights came on when working with the LED lights, the Complainant responded no, adding that they always came on when on the road.

After the hearing, the Complainant submitted a photograph showing that the Stabilitrak and ABS warning lights illuminated on the day of the hearing.

C. Inspection

Upon inspection at the hearing, before the test drive, the vehicle's odometer displayed 57,491 miles. The vehicle did not have any warning lights illuminated. The vehicle was test driven predominantly on the highway and service roads. The vehicle operated normally. The test drive ended with 57,509 miles on the odometer.

D. Summary of Respondent's Evidence and Arguments

Bobby Shreeve, field service engineer, recited his findings from his inspection of the vehicle on September 27, 2018, and June 27, 2019. He found various aftermarket modifications, including a front bumper, rear airbags, front light bar, rear LED lights, EDGE OBD2 System, fuel delivery system, gooseneck system, and antenna. With respect to the EDGE OBD2 device, the Complainant elaborated that it plugged into the OBD2 port and monitors like the gauges on the dash, for example, though the needle on the temperature gauge cannot show the exact temperature, this device can show the exact degree; he used the device to alert him when the transmission reaches a certain temperature. Mr. Shreeve pointed out that any aftermarket equipment plugged into the ALDL (Assembly Line Diagnostic Link) or DLC (Data Link Connector), other than just receiving power and ground, can cause problems (as indicated in bulletin #13-08-116-001E). Any equipment that plugs into OBD2 has the potential to cause issues, such as various engine and transmission performance issues with the SES (service engine soon) light on, intermittent driveability issues, Stabilitrak, etc. Mr. Shreeve concluded that LEDs could have a huge impact on electrical concerns.

On cross-examination, Mr. Shreeve affirmed that the Complainant did not void the warranty. He also acknowledged that regarding aftermarket modifications, there was no proof/test or direct correlation showing that a modification caused the recurring issues. Mr. Shreeve further confirmed that his review did not indicate that a service advisor had the opinion that aftermarket equipment caused the issues.

After the hearing, the Respondent submitted photographs showing the wiring for the rear LED lights attached to a factory harness. The Respondent also included bulletins #115f and #PIT5326C addressing installation of aftermarket equipment.

E. Analysis

The record reflects that the Complainant's vehicle has had extensive problems. However, the evidence does not show that the complained of conditions are more likely than not defects covered by the Respondent's warranty. As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered

by the warranty (warrantable defect).²⁷ 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. In part, the warranty generally states that:

The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new, remanufactured, or refurbished parts.²⁸

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁹ A defectively manufactured vehicle has a flaw because of some error in making it at the factory, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the manufacturing plant. On the other hand, the vehicle's warranty specifies that it does not cover damage caused by "[a]lteration, modification, or tampering to the vehicle, including, but not limited to the body, chassis, powertrain, driveline, software, or other components after final assembly by GMC" or "[i]nstallation of non-GM (General Motors) parts."³⁰ Similarly, the "warranty does not apply to hardware or software of a third party device that is connected to the vehicle or its components, even if integrated or delivered with the vehicle. . . . GM does not warrant that connections to, from or through the vehicle will be uninterrupted or error-free."³¹ Further, "this Warranty does not apply: . . . (b) to damage caused by use with another product or service; (c) to damage caused by a third party device or service."³²

²⁷ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁸ Respondent's Ex. 5, New Vehicle Limited Warranty.

²⁹ 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.").

³⁰ Respondent's Ex. 5, New Vehicle Warranty.

³¹ Respondent's Ex. 5, New Vehicle Warranty.

³² Respondent's Ex. 5, New Vehicle Warranty.

As described in the discussion of applicable law, the Complainant has the overall burden of proof in this case. One of the essential elements is that the warranty applies, i.e. the warranty covers the alleged nonconformity. Consequently, a preponderance of the evidence must show that the alleged nonconformities result from a manufacturing defect and not from any excluded damage from alteration, modification, installation of non-GM parts/devices. In the present case, the evidence indicates that the alleged nonconformities are equally likely to be warranted manufacturing defects or unwarranted aftermarket modifications.

First, the complained of conditions correspond to known issues caused by aftermarket equipment. Bulletin #13-08-116-001E, relating to aftermarket devices causing multiple issues, lists known symptoms such as: various engine and transmission performance issues with check engine light set; Stabilitrak message and code;³³ and check engine light set and numerous DTC codes. Second, Bulletins #115f and #PIT5326C prescribe specific points of access/connection for adding aftermarket equipment. Bulletin #PIT5326C warns that “[i]t is very important that electrical accessories be installed properly and not spliced or cut into the factory wiring harness.” However, one of the Respondent’s photos submitted post-hearing show cable wrap cut away from the factory wiring and aftermarket wiring apparently attached thereto. Another photo shows aftermarket wiring ostensibly spliced into existing factory wiring. Moreover, bulletin #115f indicates “[c]omponents damaged by voltage spikes from added after-market equipment is not covered by the vehicle warranty.” Third, at the April 10 and 23, 2018, repair visits, the technicians identified the LED light wiring as the cause of the check engine light. Fourth, the complained of issues in this case began after the installation of aftermarket LED lights in March 2018 (which occurred sometime after the March 5, 2018, installation of the bumper) and before the first repair visit for the issues at 14,151 miles on April 10, 2018. For reference, the Complainant purchased the vehicle on May 15, 2017, with 57 miles on the odometer. The proximity of the nonconformities to the LED light installation (about a month) and the relative remoteness between the vehicle’s purchase and the nonconformities arising (roughly 10 months and 14,000 miles) comports with an aftermarket modification causing the complained of issues. In sum, a preponderance of the evidence does not show that the nonconformities are warranted defects.

³³ The repair orders/invoices reflect that the Stabilitrak and ABS warning indicators relate to the same underlying sensor issue.

III. Findings of Fact

1. On May 15, 2017, the Complainant, purchased a new 2017 GMC Sierra 3500 HD from John Wiesner, Inc., a franchised dealer of the Respondent, in Conroe, Texas. The vehicle had 57 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
April 10, 2018	14,151	Service engine light (light bar wiring covering ambient temperature sensor); Stabilitrak message, ABS message (right rear wheel speed sensor), transmission slams when shifts
April 23, 2018	16,130	ABS message (right rear wheel sensor); service engine light (wiring covering ambient temperature sensor)
April 25, 2018		Traction control (Stabilitrak) message (left rear wheel speed sensor), ABS message
April 30, 2018	17,162	
May 9, 2018		Check engine light (no problem found); low coolant message (coolant level)
May 10, 2018	19,452	
June 5, 2018	25,276	Check engine light (mass air flow sensor and temperature sensor); Stabilitrak message (right rear speed sensor)
June 25, 2018		Service engine light (mass air flow sensor); Stabilitrak message (right rear speed sensor)
July 2, 2019	28,997	
July 25, 2018	30,276	Check engine light (nitrogen oxide sensor)
July 30, 2018		
August 2, 2018	30,662	Check engine light (nitrogen oxide sensor)
August 6, 2018		
August 9, 2018	31,118	Check engine light (charge air cooler outlet)
August 27, 2018		Check engine lamp (turbocharger, EGR, exhaust pipe, fuel injectors)
October 18, 2018	32,225	
June 27, 2019		Check engine lamp (excessive soot on mass air flow sensor and MAP sensor), ABS lamp, traction control lamp
July 19, 2019	54,247	

4. On October 12, 2018, the Complainant provided a written notice of defect to the Respondent.
5. On October 12, 2018, the Complainant filed a complaint with the Department alleging that "warning lights repeatedly illuminate and remain illuminated."
6. On January 10, 2019, 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.

7. The hearing in this case convened on August 30, 2019, in Rosenberg, Texas, before Hearings Examiner Andrew Kang, and the record closed on September 27, 2019. John Perches, attorney, appeared for the Complainant. Clifton Green, business resource manager, appeared for the Respondent.
8. The vehicle's odometer displayed 57,491 miles at the time of the hearing.
9. The warranty expired 36,000 miles after delivery (upon reaching 36,057 miles on the odometer).
10. Upon inspection at the hearing, before the test drive, the vehicle's odometer displayed 57,491 miles. The vehicle did not have any warning lights illuminated. The vehicle was test driven predominantly on the highway and service roads. The vehicle operated normally. The test drive ended with 57,509 miles on the odometer.
11. The complained of conditions arose after the installation of an aftermarket LED light in March of 2018.
12. The warranty excludes damage caused by: alteration or modification of the vehicle; use with another product; or a third party device.
13. The complained of issues correspond to known issues caused by aftermarket equipment. Bulletin #13-08-116-001E, relating to aftermarket devices causing multiple issues, lists known symptoms such as: various engine and transmission performance issues with check engine light set; Stabilitrak message and code; and check engine light set and numerous DTC codes.
14. Bulletins #115f and #PIT5326C prescribe specific points of access/connection for adding aftermarket equipment. Bulletin #PIT5326C warns that "[i]t is very important that electrical accessories be installed properly and not spliced or cut into the factory wiring harness." However, cable wrap was cut away from factory wiring and aftermarket wiring

was apparently attached to the factory wiring. Aftermarket wiring was ostensibly spliced into existing factory wiring.

15. Bulletin #115f indicates that “[c]omponents damaged by voltage spikes from added aftermarket equipment is not covered by the vehicle warranty.”
16. At the April 10 and 23, 2018, repair visits, the technicians identified the LED light wiring as the cause of the check engine light.
17. The complained of issues in this case began after the installation of aftermarket LED lights in March 2018 (which occurred sometime after the March 5, 2018, installation of the bumper) and before the first repair visit for the issues at 14,151 miles on April 10, 2018., The proximity of the nonconformities to the LED light installation (about a month) and the relative remoteness between the vehicle’s purchase and the nonconformities arising (roughly 10 months and 14,000 miles) comports with an aftermarket modification causing the complained of issues.

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. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a warrantable defect. TEX. OCC. CODE § 2301.604(a).
8. 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.
9. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
10. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
11. 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 November 26, 2019

A handwritten signature in black ink, appearing to read "Andrew Kang", written over a horizontal line.

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