

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0003949 CAF**

**AMPARO GARCIA DE CRUZ and
ANDRES RAMIREZ,
Complainants**

v.

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

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Amparo Garcia de Cruz and Andres Ramirez (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their new 2016 Nissan Sentra. Complainants assert that the vehicle's brakes make an abnormal noise and have failed to operate correctly in the past. Nissan North America, Inc. (Respondent) argued that the vehicle is operating as designed. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect and Complainants are entitled to the requested replacement relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on June 26, 2019, in Laredo, Texas before Hearings Examiner Edward Sandoval. The hearing record closed that same day. Complainants, Amparo Garcia de Cruz and Andres Ramirez, both appeared and testified at the hearing. Respondent was represented by Rafael Mariduena, Dealer Technical Specialist. Cordelia Flores, interpreter, provided Spanish interpretive services at the hearing.

II. DISCUSSION

A. Applicable Law

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

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

A rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁵

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times and: (1) at least one repair attempt was made during the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) at least one other attempt was made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.⁶

A “serious safety hazard” is defined as a “life-threatening malfunction or nonconformity that: (A) substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes; or (B) creates a substantial risk of fire or explosion.”⁷

B. Complainant’s Evidence and Arguments

Complainants purchased a new 2016 Nissan Sentra (the vehicle) from Gunn Nissan (Gunn), in San Antonio, Texas on December 23, 2016.⁸ The vehicle’s mileage was 26 at the time of delivery.⁹ Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles. The vehicle’s mileage on the date of hearing was 26,869. At the time of hearing, the warranty was still in effect.

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ 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.

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁷ Tex. Occ. Code § 2301.601(4).

⁸ Complainant Ex. 1, Buyer’s Order dated December 23, 2016.

⁹ Complainant Ex. 2, Odometer Disclosure Statement dated December 23, 2016.

1. Amparo Garcia de Cruz' Testimony

Ms. Cruz testified that she is the primary driver of the vehicle. She stated that within the first year of purchasing the vehicle she began to notice an abnormal noise from the rear wheel area when she was driving the vehicle. The noise occurred intermittently. She also noticed that when the vehicle's transmission was put in reverse an unusual noise emitted from the rear of the vehicle. Ms. Cruz testified she believed the noise was from the brakes because the noise was coming from the vehicle's rear brake area.

On October 3, 2017, Ms. Cruz and Mr. Ramirez took the vehicle to Gunn for required maintenance. At the same time, they mentioned to Gunn's service advisor their concerns regarding the abnormal noise coming from the rear of the vehicle.¹⁰ Gunn's technician performed the required maintenance, but Ms. Cruz was unaware if any repair was performed for the noise issue. The vehicle's mileage on this occasion was 7,782.¹¹ The vehicle was in the dealer's possession for a few hours and Complainants were not provided with a loaner vehicle during the repair.

Ms. Cruz testified that after returning to Laredo, Complainants decided to take the vehicle to Family Nissan (Family) in Laredo for repair for the noise issue. They took the vehicle to Family for repair for the brake noise issue on October 5, 2017, the following Monday after taking the vehicle to Gunn. Family's service technician verified that the vehicle was emitting a "screeching" noise from the rear end of the vehicle.¹² The technician determined that the rear brake cylinders were binding which was creating the noise.¹³ The technician replaced the vehicle's rear brake cylinders in order to resolve the issue.¹⁴ The vehicle's mileage on this occasion was 8,006.¹⁵ The vehicle was in the dealer's possession for three (3) to four (4) days during this repair visit. Complainants were not provided with a loaner vehicle while their vehicle was being repaired.

Ms. Cruz stated that the vehicle drove fine for a while, but then she began to intermittently hear an unusual noise from rear of the vehicle. In addition, she experienced an issue where the vehicle's brake pedal would descend to the vehicle's floorboard when she stepped on the pedal. As a result of the issues, Complainants took the vehicle to Family for repair on November 15, 2018. Family's service technician verified the issues and determined that the brake pedal felt "spongy" and that this was creating a situation where the vehicle was hard to stop.¹⁶ The technician replaced the

¹⁰ Complainant Ex. 3, Repair Order dated October 3, 2017. The repair order does not indicate whether any repair was performed for the noise issue.

¹¹ *Id.*

¹² Complainant Ex. 5, Repair Order dated October 5, 2017.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 6, Repair Order dated November 15, 2018.

vehicle's master cylinder in order to address the issue.¹⁷ The vehicle's mileage when it was taken to the dealership on this occasion was 19,615.¹⁸ The vehicle was in the dealer's possession for six (6) days.¹⁹ Complainants were not provided with a loaner vehicle while their vehicle was being repaired.

Complainants took the vehicle back to Family for repair on November 26, 2018, for an abnormal noise issue emanating from the rear of the vehicle. Family's service technician determined that the left rear brake spring had broken which caused the strut bar to fall and damage the vehicle's left brake shoe.²⁰ The broken spring also caused additional damage to the other brake springs and the left rear brake drum and cylinder.²¹ The technician replaced all of the left rear brake components, including the brake cylinder, springs, brake shoe, and brake drum.²² The mileage on the vehicle on this occasion was 20,015.²³ The vehicle was in the dealer's possession until November 29, 2018.²⁴ Complainants were not provided with a rental or loaner vehicle while their vehicle was being repaired.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on December 11, 2018.²⁵

Ms. Cruz testified that she again experienced a situation where the vehicle's brake pedal went to the floorboard when she depressed the pedal. Complainants took the vehicle to Gunn for repair for the issue on February 22, 2019. Gunn's technician verified the issue and determined that the brake booster had an internal failure.²⁶ The technician replaced the booster in order to resolve the issue.²⁷ The vehicle's mileage on this occasion was 22,417.²⁸ The vehicle was at the dealer's location until February 28, 2019.²⁹

Ms. Cruz testified that as of the date of hearing she had not experienced any additional problems with the vehicle's brakes since February of 2019. The brakes seemed to be working correctly. However, she doesn't feel safe or comfortable driving the vehicle because of the problems she has experienced with the vehicle. Ms. Cruz did add that she had heard an unusual noise from the vehicle when shifting the vehicle's transmission during a drive.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 4, Repair Order dated November 26, 2018.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Respondent Ex. 1, National Service History dated June 10, 2019.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

2. Andres Ramirez' Testimony

Mr. Ramirez testified that he is not the primary driver of the vehicle. However, he drives it approximately once a month. Mr. Ramirez accompanied Ms. Cruz to San Antonio when they purchased the vehicle. Complainants both test drove the vehicle before purchasing it and did not notice any issues with the vehicle's brakes at the time. Mr. Ramirez stated he sometimes called the dealership to make the appointments for repair to the vehicle, but Ms. Cruz usually took the vehicle to the dealer for repair herself. Mr. Ramirez testified that he was present at the dealership during the last repair in February of 2019.

Mr. Ramirez stated that he accompanied Ms. Garcia on October 3, 2017, when they took the vehicle to Gunn for repair. However, he did not remember if any repairs were made to the vehicle at the time.

Mr. Ramirez testified that on October 5, 2017, Ms. Cruz took the vehicle to Family for repair because of the screeching noise coming from the rear brake area. The dealer's service technician replaced both rear brake cylinders during the repair. After the repair the vehicle operated without issue for approximately six months before the noise returned.

Mr. Ramirez stated that on November 15, 2018, Complainants took the vehicle to Family because on at least one occasion when Ms. Cruz was driving the vehicle the brake pedal sunk to the floor when she stepped on the pedal. Additionally, Complainants were hearing an abnormal noise from the rear of the vehicle during this period of time. Family held the vehicle for five (5) or six (6) days during which they replaced the vehicle's master cylinder. However, Complainants continued to hear an unusual noise from the rear of the vehicle after the repair.

Complainants then took the vehicle to Family for repair for the noise issue on November 26, 2018. The dealer's service technicians replaced all of the vehicle's left rear brake components during this repair.

Mr. Ramirez testified that they continued to hear an unusual noise from the rear of the vehicle. Complainants felt that the technicians at Family Nissan were not repairing the vehicle properly and decided to take the vehicle to Gunn for repair. Mr. Ramirez testified that on February 22, 2019, Gunn's technician replaced the vehicle's master cylinder again.

Complainants filed a lemon law complaint with the Department on December 11, 2018, prior to the repair at Gunn. However, Complainants did not send notice to Nissan concerning their dissatisfaction with the vehicle. Mr. Ramirez stated that he has not heard noise from the rear of the vehicle after the February 2019 repair attempt, but the gear shifter started to make an abnormal noise when the vehicle's transmission was put in reverse.

Mr. Ramirez stated that he wants the vehicle to be replaced by Respondent. He does not feel that his mother (Ms. Cruz) is safe when driving the vehicle.

During the test drive performed at the hearing, Mr. Ramirez testified that the brakes felt squishy, that they squeaked, and that they went to the floor when he stepped on the brake pedal.

C. Respondent's Evidence and Arguments

Rafael Maridueno, Dealer Technical Specialist, testified for Respondent in the hearing. Mr. Maridueno has worked in the automotive industry for over 30 years. He has been in his current position for the last four (4) years. Mr. Maridueno is an Automotive Service Excellence (ASE) Master Certified Technician. He's also a Nissan Certified Master Technician.

Mr. Maridueno testified the vehicle's transmission may make a clunking noise when shifting into gear because of the design of the vehicle's transmission. He also stated that Respondent did not request for a final opportunity to cure prior to the hearing. Mr. Maridueno stated that Respondent or its representatives have only made four repair attempts to correct the issues with the brakes.

Mr. Maridueno stated that on October 3, 2017, the vehicle's oil was changed but no repair was made for the oil issue. On October 5, 2017, Family's service technician replaced both rear brake cylinders because they were sticking and were causing the brakes to wear out and to make a screeching noise when used. On November 15, 2018, Family's technician replaced the vehicle's master cylinder to alleviate the issue of the vehicle having difficulty stopping and the brake pedal going to the floorboard when it was depressed. On November 26, 2018, Family's technician found that the left rear brake's retractor spring was broken. The technician replaced all of the components for the vehicle's left rear brake including, the springs, the brake shoe, and brake drum. On February 22, 2019, Gunn's service technician verified that the vehicle's brake pedal would depress to the vehicle's floorboard when the pedal was applied. The technician replaced the vehicle's brake boosters for the brake issue. In addition, the technician found that the vehicle's shift lock actuator was seized and was binding. As a result, the technician replaced the vehicle's shifter assembly.

Mr. Maridueno stated that Nissan did not receive any written communication of defect for the vehicle.

Mr. Mariduena also testified that during the test drive the brakes operated normally but there was a noise from the rear of the vehicle that should be addressed. The noise could be the result of the suspension creaking or the brakes but without an inspection of the vehicle it was impossible to determine.

D. Analysis

Under the Lemon Law, Complainants bear 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, Complainants must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainants are required to serve written notice of the 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, Complainants are entitled to have the vehicle repurchased or replaced.

The first issue to address is whether Complainants' vehicle has a defect or condition that substantially impairs its use or market value or which creates a serious safety hazard. The totality of the evidence presented at the hearing reveals that the vehicle has had several issues with its rear brakes and that there is currently a noise emanating from the vehicle's rear brake area. The evidence reveals that the vehicle's rear brake cylinders, left rear brake components, master cylinder, and brake boosters have all been replaced in the period of time that Complainants have owned the vehicle. Despite the repairs, there is still an unusual noise coming from the rear brake area. Given that the proper operation of a vehicle's brakes is essential to the safety of a vehicle's passengers, the hearings examiner must hold that the vehicle's continuing brake issue creates a serious safety hazard as it substantially impedes Complainants' ability to control or operate the vehicle for its ordinary or intended purposes.

Complainants also presented evidence to indicate that Respondent or its authorized representative was provided with a reasonable number of repair attempts to repair the defect or nonconformity with the vehicle. Complainants presented the vehicle for repair to Respondent's authorized representatives on the following dates: October 3, 2017; October 5, 2017; November 15, 2018; and November 26, 2018. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(2) specifies that a rebuttable presumption that a reasonable number of attempts to repair have been made to repair a serious safety hazard if "at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first,

immediately following the date of the first repair attempt.” The evidence presented at the hearing establishes that Complainants have met the requirements of this test since they took the vehicle for repair the requisite number of times within the specified time frame. As such, Complainants have established that a reasonable number of attempts to repair the vehicle were made by Respondent or its representatives.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with written notice of the defect (through the notice of hearing mailed to the parties by the Office of Administrative Hearings [OAH]) and a final opportunity to cure the defect. Although Respondent did not request for a specific final opportunity to cure, Complainants took the vehicle to Gunn for repair on February 22, 2019, after the filing of the Lemon Law complaint and Respondent had the opportunity to send a representative to the dealers location to inspect the vehicle.

Although Respondent has been provided several opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to repair the vehicle so that it conforms to their written warranty. As such, Complainants have met their burden of proof to establish that the vehicle has a warrantable and existing defect or condition which creates a serious safety hazard as defined in the Occupations Code.

Based on the evidence and the arguments presented, the hearings examiner finds that replacement of the vehicle is the appropriate remedy in this case. Complainants’ request for replacement relief is hereby granted.

III. FINDINGS OF FACT

1. Amparo Garcia de Cruz and Andres Ramirez (Complainants) purchased a new 2016 Nissan Sentra on December 23, 2016, from Gunn Nissan (Gunn) in San Antonio, Texas, with mileage of 26 at the time of delivery.
2. The manufacturer or distributor 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 occurs first.
3. The vehicle’s mileage on the date of hearing was 26,869.
4. Respondent’s warranty was still in effect at the time of hearing.
5. Complainants have experienced several issues with the vehicle’s brakes since purchasing the vehicle.

6. Complainants took the vehicle to Respondent's authorized dealers in order to address their concerns with the vehicle's brakes, on the following dates:
 - a. October 3, 2017, at 7,782 miles;
 - b. October 5, 2017, at 8,006 miles;
 - c. November 15, 2018, at 19,615 miles; and
 - d. November 26, 2018, at 20,015 miles.
7. On October 3, 2017, Gunn's service technician inspected the vehicle's brakes, but did not make any repairs at the time.
8. On October 5, 2017, Complainants took the vehicle for repair to the brakes to Family Nissan (Family) located in Laredo, Texas.
9. During the repair visit described in Findings of Fact #8, Family's service technician determined that the rear brake cylinders were stuck and were causing an abnormal noise from the rear of the vehicle. The technician replaced both rear brake cylinders.
10. On November 15, 2018, Family's service technician verified that the brake pedal was sinking to the floorboard when pressed which made it hard to stop the vehicle. As a result, the technician replaced the vehicle's master cylinder assembly.
11. On November 26, 2018, Family's service technician replaced the vehicle's left rear brake (all components) and the left rear brake cylinder because the left rear brake spring, brake shoe, drum, and cylinder were damaged.
12. On December 11, 2018, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. Respondent did not request for a final opportunity to cure the issue raised by Complainants.
14. On February 22, 2019, Complainants took the vehicle to Gunn for repair for the brake issues that they were experiencing in the vehicle.
15. During the repair described in Findings of Fact #14, Gunn's service technician replaced the vehicle's brake booster in order to resolve the issue with the vehicle's brake pedal depressing to the vehicle's floorboard when applied by the driver.
16. During the vehicle test drive taken at hearing, all of the individuals present in the vehicle heard noises coming from the vehicle's rear brake area at times.

17. On March 25, 2019, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
18. The notice of hearing described in Findings of Fact #17 included Complainant's written lemon law complaint which provided Respondent with written notification of the issues raised by Complainants.
19. The hearing in this case convened on June 26, 2019, in Laredo, Texas before Hearings Examiner Edward Sandoval. The hearing record closed that same day. Complainants, Amparo Garcia de Cruz and Andres Ramirez, both appeared and testified at the hearing. Respondent was represented by Rafael Mariduena, Dealer Technical Specialist. Cordelia Flores, interpreter, provided Spanish interpretive services at the hearing.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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. Complainants 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. Complainants bear the burden of proof in this matter.
6. Complainants proved by a preponderance of the evidence that the vehicle has a verifiable defect or nonconformity which creates a serious safety hazard. Tex. Occ. Code § 2301.604.
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainants' vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.

8. Respondent did not request a final opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
9. Based on the above Findings of Fact and Conclusions of Law, Complainants are entitled to relief and replacement of their 2016 Nissan Sentra under Texas Occupations Code § 2301.604(a).

IT IS THEREFORE ORDERED that:

1. Respondent shall, in accordance with Texas Administrative Code § 215.208(d)(1)(A), promptly authorize the exchange of Complainant's new 2016 Nissan Sentra (the reacquired vehicle) with Complainants' choice of any comparable motor vehicle.
2. Respondent shall instruct the dealer to contract the sale of the selected comparable vehicle with Complainants under the following terms:
 - (a) The sales price of the comparable vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);
 - (b) The trade-in value of Complainants' 2016 Nissan Sentra shall be the MSRP at the time of the original transaction, less a reasonable allowance for Complainant's use of the vehicle;
 - (c) The use allowance for replacement relief shall be calculated in accordance with the formula outlined in Texas Administrative Code § 215.208(b)(2) (the use allowance is \$1,357.08);
 - (d) The use allowance paid by Complainants to Respondent shall be reduced by \$35.00 (the refund for the filing fee) (after deducting the filing fee, the use allowance is reduced to **\$1,322.08**);
3. Respondent's communications with Complainants finalizing replacement of the reacquired vehicle shall be reduced to writing, and a copy thereof shall be provided to the Department within twenty (20) days of completion of the replacement.
4. Respondent shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department.³⁰

³⁰ Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.

5. Respondent shall affix the disclosure label to the reacquired vehicle in a conspicuous location (*e.g.*, hanging from the rear view mirror). Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.
7. Respondent shall repair the defect or condition that was the basis of the 2016 Nissan Sentra's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.
8. Upon replacement of Complainants' 2016 Nissan Sentra, Complainants shall be responsible for payment or financing of the usage allowance of the reacquired vehicle, any outstanding liens on the reacquired vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees. Further, in accordance with 43 Tex. Administrative Code § 215.208(d)(2):
 - (a) If the comparable vehicle has a higher MSRP than the reacquired vehicle, Complainants shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs to the manufacturer, converter or distributor; and
 - (b) If the comparable vehicle has a lower MSRP than the reacquired vehicle, Complainants will be credited the difference in the MSRP between the two vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the reacquired vehicle.
9. Complainants shall be responsible for obtaining financing, if necessary, to complete the transaction.
10. The replacement transaction described in this Order shall be completed within 20 calendar days from the receipt of this Order. If the transaction cannot be accomplished within the ordered time period, Respondent shall repurchase Complainants' 2016 Nissan Sentra pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be **\$11,918.31**. The refund shall be paid to Complainants and the lien holder, if any, as their interests appear. If clear title is delivered, the full refund shall be paid to Complainants.

Purchase price, including tax, title, license and registration	\$13,240.39
Delivery mileage	26
Mileage at first report of defective condition	7,782
Mileage on hearing date	16,869
Useful life determination	120,000

Purchase price, including tax, title, license and registration						\$13,240.39
Mileage at first report of defective condition						7,782
Less mileage at delivery						<u>-26</u>
Unimpaired miles						7,756
Mileage on hearing date						16,869
Less mileage at first report of defective condition						<u>-7,782</u>
Impaired miles						9,087
Reasonable Allowance for Use Calculations:						
Unimpaired miles						
	<u>7,756</u>					
	120,000	X	\$13,240.39	=		\$855.77
Impaired miles						
	<u>9,087</u>					
	120,000	X	\$13,240.39	X .5	=	<u>\$501.31</u>
Total reasonable allowance for use deduction:						\$1,357.08
Purchase price, including tax, title, license and registration						\$13,240.39
Less reasonable allowance for use deduction						-\$1,357.08
Plus filing fee refund						<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT						\$11,918.31

11. If Complainants' 2016 Nissan Sentra is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of Respondent's reacquisition of the vehicle, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the trade-in value of Complainants' vehicle.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

SIGNED August 13, 2019



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