

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 19-0004797 CAF**

**JUAN C. and JESSENIA K. OCON,  
Complainants**

v.

**GENERAL MOTORS LLC,  
Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Juan C. and Jessenia K. Ocon (Complainants) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their new 2017 Cadillac Escalade. Complainants assert that the vehicle is defective because the vehicle’s transmission jerks when driving the vehicle between 5 to 30 mph in stop and go traffic. In addition, the vehicle’s air conditioner does not work properly and does not cool off the vehicle adequately. General Motors LLC (Respondent) argued that the vehicle does not have a defect or nonconformity and that Complainants are not entitled to repurchase or replacement relief. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainants are eligible for repurchase relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the hearing record closed on August 21, 2019, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainants, Juan C. and Jessenia K. Ocon, appeared and represented themselves in the hearing. Respondent, General Motors LLC, was represented in the hearing by Clifton Green, Business Resource Manager. Bobby Shreeve, Field Service Engineer (FSE), testified for Respondent.

**II. DISCUSSION**

**A. Applicable Law**

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the owner must have mailed written notice of the alleged defect or

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

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

nonconformity to the manufacturer.<sup>3</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>4</sup>

In addition to these 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 by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor 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 occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>5</sup>

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 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.<sup>6</sup>

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.<sup>7</sup>

## **B. Complainant’s Evidence and Arguments**

Complainants purchased a new 2017 Cadillac Escalade (the vehicle) from Bert Ogden Chevrolet, Inc. (Ogden) in Mission, Texas on December 21, 2017.<sup>8</sup> The vehicle had mileage of 2,035 at the time of purchase.<sup>9</sup> Respondent provided a New Vehicle Limited Warranty for the vehicle which provides bumper-to-bumper coverage for four (4) years or 50,000 miles, whichever comes first.<sup>10</sup> In addition, Respondent provided a powertrain warranty for the vehicle’s powertrain providing coverage for six (6) years or 70,000 miles.<sup>11</sup> At the time of hearing, the vehicle’s mileage was 29,513. Respondent’s warranties for the vehicle were still in effect on the hearing date.

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>5</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a) (3) provides a third method 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. This section requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.601(4).

<sup>8</sup> Complainant Ex. 1, Buyer’s Order and Motor Vehicle Retail Installment Sales Contract dated December 21, 2017.

<sup>9</sup> Complainant Ex. 2, Vehicle Service Contract Registration Page, undated.

<sup>10</sup> Respondent Ex. 3, New Vehicle Limited Warranty (Document ID 4258227), undated.

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

### 1. Juan C. Ocon's Testimony

Juan C. Ocon, co-Complainant, testified in the hearing. He stated that his wife and co-Complainant, Jessenia K. Ocon, is the primary driver of the vehicle. Mr. Ocon stated that he drives the vehicle about twice a month. Mr. Ocon testified that he and Ms. Ocon were told by the dealer's sales person that the vehicle was new when they purchased it, but had been used as a loaner or demonstrator at times and that was why the vehicle's mileage was 2,035 at the time of purchase.

Mr. Ocon stated that shortly after purchasing the vehicle, the air conditioner stopped working. In addition, the vehicle's XM radio would intermittently cut off without warning. Mr. Ocon took the vehicle to Ogden for repair for the air conditioner and radio issues on January 31, 2018. Ogden's service technician determined that the vehicle's rear auxiliary blower motor wasn't working and replaced it in order to resolve the air conditioner issue.<sup>12</sup> The technician also determined that vehicle's XM radio was working properly.<sup>13</sup> The vehicle's mileage at the time of the repair visit was 6,144.<sup>14</sup> The vehicle was in Ogden's possession until February 1, 2018. Complainants did not receive a loaner vehicle while their vehicle was being repaired. Mr. Ocon stated that the vehicle's air conditioner was working properly when he picked up the vehicle.

Mr. Ocon testified that they experienced further problems with the vehicle's air conditioner towards the middle of summer. The air conditioner began to take a long time to cool the vehicle properly. In addition, Complainants began to notice that the vehicle's transmission seemed to be jerking when driving the vehicle at low speed. On September 24, 2018, Complainants took the vehicle to Ogden for repair for the issues. Ogden's service technician determined that the vehicle's air conditioner's evaporator was leaking as the result of a poor weld.<sup>15</sup> The technician replaced the evaporator core in order to address the issue regarding the air conditioner.<sup>16</sup> In addition, the technician special ordered a harness for the vehicle in order to address the issue of the transmission jerking.<sup>17</sup> However, Mr. Ocon testified that he was informed by Ogden's service advisor that they were going to replace the vehicle's transmission and that they were waiting on a part in order to do so. The vehicle's mileage on this occasion was 19,923.<sup>18</sup> The vehicle was in Ogden's possession until September 27, 2018. Complainants were not provided a loaner vehicle while their vehicle was being repaired.

Mr. Ocon stated that he was informed by Ogden's service advisor that he would be contacted by an Ogden representative when the special ordered part was received in order to replace the

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<sup>12</sup> Complainant Ex. 3, Repair Order dated January 31, 2018.

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

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

<sup>15</sup> Complainant Ex. 5, Repair Order dated September 24, 2018.

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

<sup>17</sup> *Id.*

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

vehicle's transmission. Mr. Ocon testified that he was never contacted by a dealer representative. After a few weeks, Mr. Ocon contacted the dealer to determine the status of the transmission replacement and was told that the service advisor in question had been discharged and that he had been lying to customers. A replacement transmission was never ordered for Complainants' vehicle.

Mr. Ocon testified that the vehicle's air conditioner seemed to be working properly after the repair in September. However, the transmission still jerked when driving at low speeds. Mr. Ocon likened it to the vehicle being rear ended. On November 7, 2018, Complainants took the vehicle back to Ogden for repair for the transmission issue and because the vehicle would shake or shutter when accelerating at speeds between 35 to 50 mph. Ogden's service technician determined that the vehicle had excessive idle vibration and replaced the vehicle's engine mounts in order to resolve the jerking issue.<sup>19</sup> The technician also flushed and drained the transmission's fluids in order to resolve the shake or shudder issue at higher speeds.<sup>20</sup> The vehicle's mileage on this occasion was 22,462.<sup>21</sup> The vehicle was in Ogden's possession until November 12, 2018. Complainants did not receive a loaner vehicle while their vehicle was in Ogden's possession.

Mr. Ocon testified that the transmission jerking at low speeds continued to occur when driving the vehicle. Complainants took the vehicle to Ogden to address the issue on November 29, 2018. Ogden's service technician test drove the vehicle and was unable to find a problem with it. No repairs were performed at the time. The vehicle's mileage was 22,678 during this repair visit.<sup>22</sup> The vehicle was in Ogden's possession until December 3, 2018. Complainants did not receive a loaner vehicle while their vehicle was being repaired.

Complainants took the vehicle back to Ogden for repair for the transmission issue on December 12, 2018, since the vehicle's transmission was still jerking when driving at low speeds. Ogden's service technician determined that the vehicle was sputtering and hesitating to accelerate from a stop.<sup>23</sup> He followed the instructions published in Respondent's technical service bulletin (TSB) 16-NA-404 and reprogrammed the vehicle's transmission control module (TCM) in order to resolve the issue.<sup>24</sup> The vehicle's mileage on this occasion was 23,071.<sup>25</sup> The vehicle was in Ogden's possession for one (1) day. Complainants were not provided a loaner vehicle during the repair.

Mr. Ocon said that the repair performed in December of 2018, helped with the transmission issue somewhat, but the problem was still present.

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<sup>19</sup> Complainant Ex. 6, Repair Order dated November 7, 2018.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Complainant Ex. 7, Repair Order dated November 29, 2018.

<sup>23</sup> Complainant Ex. 8, Repair Order dated December 12, 2018.

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

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

Mr. Ocon stated that the vehicle's transmission continued to jerk when driving in heavy traffic at low speeds and the air conditioner was not cooling the vehicle. Complainants took the vehicle to Ogden for repair for the issues on January 9, 2019. Ogden's service technician determined that the transmission jerk was normal according to TSB 16-NA-361.<sup>26</sup> The technician found that the vehicle's air conditioner's condenser was leaking Freon.<sup>27</sup> The technician replaced the condenser and recharged the Freon in order to resolve the issue.<sup>28</sup> The vehicle's mileage at the time of the repair was 23,502.<sup>29</sup> The vehicle was in Ogden's possession until January 11, 2019. Complainants were not provided with a loaner vehicle while their vehicle was being repaired.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 10, 2019.<sup>30</sup> Complainants also mailed a letter to Respondent on January 21, 2019, in which they indicated that they were dissatisfied with the vehicle.<sup>31</sup>

Mr. Ocon testified that after filing the Lemon Law complaint Complainants were contacted by Respondent's representative who requested that Complainants allow Respondent to send a representative to inspect the vehicle. Complainants took the vehicle to Ogden for the inspection on March 12, 2019. Respondent's representative was unable to find a problem with the vehicle's transmission.<sup>32</sup> No repairs were performed at the time. The vehicle's mileage on this occasion was 25,717.<sup>33</sup> The vehicle was in Ogden's possession until March 29, 2019. Complainants were not provided with a loaner vehicle while their vehicle was being repaired.

Mr. Ocon testified that the vehicle's air conditioner is currently not working. Neither he nor Ms. Ocon are currently driving the vehicle with any regularity.

During the test drive taken at the time of hearing, Mr. Ocon stated that the transmission issue usually occurs when driving the vehicle in traffic and at lower speeds. The test drive did not take place during a heavy traffic period.

## 2. Jessenia K. Ocon's Testimony

Jessenia K. Ocon, co-Complainant, testified in the hearing. She stated that she is the primary driver of the vehicle. She usually drives the vehicle as her daily commuter from her home to the location

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<sup>26</sup> Complainant Ex. 9, Repair Order dated January 9, 2019. The service technician referred to TSB 16-NA-361 as providing information that the vehicle was operating normally. However, the TSB in question was not submitted as evidence in the hearing.

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

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

<sup>29</sup> *Id.*

<sup>30</sup> Complainant Ex. 4, Lemon Law Complaint dated January 10, 2019.

<sup>31</sup> Complainant Ex. 11, Letter to General Motors Company dated January 21, 2019.

<sup>32</sup> Complainant Ex. 10, Repair Order dated March 12, 2019.

<sup>33</sup> *Id.*

where she works in Palmview, Texas. Ms. Ocon stated that she feels the vehicle's transmission jerk almost every day when she's driving in heavy traffic between 5 to 30 mph to and from work.

Ms. Ocon stated that she was tired of having to take the vehicle to the dealer for repair for the transmission issue. She said the issue was worse when it first manifested, but the issue has not occurred as frequently after repairs were performed on the vehicle. However, the issue with the transmission jerking still occurs once or twice a day.

Ms. Ocon stated that she had been driving the vehicle daily up until about two (2) months prior to the hearing date when the air conditioner stopped working. Ms. Ocon stopped driving the vehicle at that time.

Ms. Ocon stated that she does not feel safe driving in the vehicle with her daughter.

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

#### **1. Clifton Green's Testimony**

Clifton Green, Business Resource Manager, represented and testified for Respondent.

Mr. Green testified that the vehicle's new car warranty provides coverage for the vehicle for four (4) years or 50,000 miles, whichever comes first. Respondent has also provided a powertrain warranty for the vehicle providing coverage for six (6) years or 70,000 miles.

#### **2. Bobby Shreeve's Testimony**

Bobby Shreeve, Field Service Engineer, testified for Respondent. Mr. Shreeve has worked for 22 years in the automotive industry. He began his career working as a service technician at various independent automotive dealerships. Mr. Shreeve has worked for the last three (3) years for Respondent in his current position. Mr. Shreeve is an Automotive Service Excellence (ASE) Certified Master Technician and a General Motors World Class Technician.

Mr. Shreeve testified that he inspected the vehicle on March 12, 2019, at Ogden during a final inspection/repair attempt. At the time that Mr. Shreeve inspected the vehicle, he was informed that Complainants' concern was that the vehicle's transmission was clunking when shifting gears.<sup>34</sup> Mr. Shreeve checked the vehicle's computers to determine if there were any stored trouble codes and there were none at the time.<sup>35</sup> Mr. Shreeve testified that he test drove the vehicle and was unable to duplicate Complainants' concern during the drive. Mr. Shreeve stated that the vehicle's air conditioner was working on the date of the inspection. Mr. Shreeve also testified that during the inspection he discovered a tracking device attached to the vehicle's high speed data bus. He

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<sup>34</sup> Respondent Ex. 1, Ocon Vehicle Legal Inspection dated March 12, 2019.

<sup>35</sup> *Id.*

stated that the device could cause undesirable traffic on the bus. However, this would not affect the vehicle's air conditioner.

Mr. Shreeve testified that the vehicle's air conditioner's rear blower motor was replaced on January 31, 2018. He also stated that on September 24, 2018, the vehicle's air conditioner's evaporator was replaced because it was leaking Freon. Also, on January 9, 2019, the vehicle's air conditioner's condenser was replaced because it was leaking Freon. Mr. Shreeve stated that all of the issues with the vehicle's air conditioner were caused by different problems.

Mr. Shreeve testified that on September 24, 2018, Ogden's service technician special ordered a wiring harness for the vehicle. There was nothing to indicate that a new transmission had been ordered for the vehicle at the time. On November 7, 2018, Ogden's service technician replaced the vehicle's engine mounts in order to resolve the feeling of jerking forward at lower speeds. On December 12, 2018, Ogden's service technician reprogrammed the vehicle's TCM in order to alleviate undesired shifting and the subsequent jerking of the transmission.

Mr. Shreeve testified that he did not feel anything abnormal in the way the vehicle shifted during the test drive taken at the time of hearing. The vehicle did not stop or accelerate suddenly. It seemed that the transmission was shifting at its normal shift points.

Mr. Shreeve stated that he feels that the vehicle is safe to drive and that it is operating correctly. He doesn't feel that the vehicle's value has been affected in any way.

#### **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.

##### **1. Air Conditioner Issue**

The first issue raised by Complainants was that the vehicle's air conditioner does not seem to work properly. There have been three repairs for the air conditioner in which the vehicle's rear auxiliary blower motor, evaporator, and condenser have been replaced. The latter two items were replaced because they were leaking Freon which is required in order to cool the air emitting from the air conditioning system. In addition, the air conditioner was not working on the date of hearing which

was less than two (2) years from the date of purchase. Although the vehicle's air conditioner is not currently working, the issue does not constitute grounds to order repurchase or replacement of the vehicle since there were three (3) separate problems with the air conditioning unit, one of which was a blower motor not working. In addition, Complainants did not submit the vehicle for repair for the air conditioner the requisite number of times (four) within the required time frame in order to establish that Respondent has had a reasonable opportunity to repair the vehicle.

## **2. Transmission Jerking Issue**

The totality of the evidence presented at the hearing reveals that the vehicle's transmission jerks when driving the vehicle at speeds between 5 and 30 mph in heavy traffic despite several attempts by Respondent's authorized dealer to repair it. The problem occurs intermittently and primarily in heavy traffic. The first hand testimony provided by Complainants indicate that the problem continues to occur despite several repair attempts by the dealer's service technicians. As such, the hearings examiner must hold that Complainants have met the burden of persuasion to establish the existence of a defect or nonconformity (the transmission jerking intermittently) in the subject vehicle. The defect or nonconformity substantially impairs the use or market value of the vehicle.

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 dealer on four (4) separate occasions prior to the filing of the Lemon Law complaint: September 24, 2018; November 7, 2018; November 29, 2018; and December 12, 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)(a) specifies that a rebuttable presumption that a reasonable number of attempts to repair a defect or nonconformity in a vehicle is established if Respondent has had four (4) repair attempts prior to the vehicle having been driven 24,000 miles or within the first 24 months following the date of delivery to the owner of the vehicle. 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 and the problem continued to exist. As such, Complainants have established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainants provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainants informed Respondent via letter dated January 21, 2019, of the issue with the vehicle's transmission jerking and providing Respondent with an opportunity to cure. Respondent had its field service engineer inspect the vehicle on March 12, 2019. No repairs to the vehicle were performed at the time.



Although Respondent has been provided adequate opportunity 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.

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

### III. FINDINGS OF FACT

1. Juan C. and Jessenia K. Ocon (Complainants) purchased a new 2017 Cadillac Escalade on December 21, 2017, from Bert Ogden Chevrolet, Inc. (Ogden) in Mission, Texas with mileage of 2,035 at the time of delivery.
2. The manufacturer or distributor of the vehicle, General Motors LLC (Respondent), issued a New Vehicle Limited Warranty for the vehicle providing coverage for four (4) years or 50,000 miles, whichever comes first. In addition, Respondent provided a powertrain warranty providing coverage for the vehicle's powertrain for six (6) years or 70,000 miles.
3. The vehicle's mileage on the date of the hearing was 29,513.
4. At the time of hearing the warranties for the vehicle were still in effect.
5. Soon after purchasing the vehicle, Complainants noticed that the vehicle's air conditioner was not working properly, in that air was not being blown out of the vents.
6. Over the course of the next year and a half, Complainants experienced issues where the air conditioner did not blow cold air and the vehicle's transmission would intermittently jerk when driving the vehicle between 5 to 30 mph in heavy traffic.
7. Complainants' vehicle was serviced by Respondent's authorized dealer, Ogden, on the following dates because of Complainants' concerns with the vehicle's transmission jerking when driving between 5 to 30 mph and/or the air conditioner not working:
  - a. January 31, 2018, at 6,144 miles;
  - b. September 24, 2018, at 19,923 miles;
  - c. November 7, 2018, at 22,462 miles;
  - d. November 29, 2018, at 22,678 miles;
  - e. December 12, 2018, at 23,071 miles; and
  - f. January 9, 2019, at 23,502 miles.

8. On January 31, 2018, Ogden's service technician replaced the vehicle's rear auxiliary blower motor because air was not blowing out of the vehicle's rear air conditioning vents. In addition, the vehicle's XM radio was inspected to determine why the radio signal was cutting out intermittently. The technician could not discover any problem with the radio.
9. On September 24, 2018, Ogden's service technician replaced the vehicle's air conditioner evaporator core because Freon was leaking out of it causing the air conditioner not to cool off the vehicle properly. In addition, the technician special ordered a harness for the vehicle in order to address the issue of the vehicle jerking while shifting and at low speeds.
10. On November 7, 2018, Ogden's service technician replaced both of the vehicle's engine mounts in order to address the issue of the vehicle jerking, as the technician felt that the problem was caused by excessive idle vibration.
11. Also, on November 7, 2018, Ogden's service technician flushed and drained the vehicle's transmission fluids in order to address Complainants' concern that the vehicle was shaking or shuddering when driving the vehicle between 35 to 50 mph.
12. On November 29, 2018, Ogden's service technician inspected the vehicle due to Complainants' concern that the vehicle was jerking when it was driven at lower speeds. The technician did not perform any repairs at the time as they could not discover a problem with the vehicle.
13. On December 12, 2018, Ogden's service technician reprogrammed the vehicle's transmission control module (TCM) in order to address Complainants' concern that the vehicle was sputtering and hesitating during acceleration.
14. On January 9, 2019, Ogden's service technician replaced the vehicle's air conditioner compressor because it had a Freon leak and the air conditioner was not blowing cold air. No repair was performed for the transmission jerking issue as the technician felt that the vehicle's transmission was operating normally.
15. On January 10 2019, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On January 21, 2019, Complainants mailed a letter to Respondent informing them of their dissatisfaction with the vehicle.
17. On March 12, 2019, Complainants took the vehicle to Ogden for an inspection and repair to be performed by Respondent's field service advisor (FSE), Bobby Shreeve.

18. During the vehicle inspection performed on March 12, 2019, Mr. Shreeve was unable to duplicate Complainants' concerns regarding the vehicle's transmission. The vehicle's air conditioner was working on the date of the inspection.
19. The vehicle's air conditioner was not working on the date of hearing, August 21, 2019.
20. The vehicle's transmission still jerks when driving the vehicle between 5 to 30 mph in heavy traffic.
21. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$70,653.36
Delivery mileage	2,035
Mileage at first report of defective condition	6,144
Mileage on hearing date	29,513
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$70,653.36
Mileage at first report of defective condition			6,144		
Less mileage at delivery			<u>-2,035</u>		
Unimpaired miles			4,109		
Mileage on hearing date			29,513		
Less mileage at first report of defective condition			<u>-6,144</u>		
Impaired miles			23,369		
Reasonable Allowance for Use Calculations:					
Unimpaired miles			<u>4,109</u>		
	120,000	X		\$70,653.36	= \$2,419.29
Impaired miles			<u>23,369</u>		
	120,000	X		\$70,653.36 X .5	= <u>\$6,879.58</u>
Total reasonable allowance for use deduction:					\$9,298.87
Purchase price, including tax, title, license and registration					\$70,653.36
Less reasonable allowance for use deduction					<u>-\$9,298.87</u>
Plus filing fee refund					<u>\$35.00</u>
<b>TOTAL REPURCHASE AMOUNT</b>					<b>\$61,389.49</b>

22. On April 10, 2019, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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.
23. The hearing in this case convened and the hearing record closed on August 21, 2019, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainants, Juan C. and Jessenia K. Ocon, appeared and represented themselves in the hearing. Respondent, General Motors LLC, was represented in the hearing by Clifton Green, Business Resource Manager. Bobby Shreeve, Field Service Engineer (FSE), testified for Respondent.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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' vehicle has an existing defect or condition that substantially impairs the use or market value of the vehicle, *i.e.*, the vehicle's transmission jerking when the vehicle is driven between 5 to 30 mph in heavy traffic. Tex. Occ. Code § 2301.604(a).
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. Based on the above Findings of Fact and Conclusions of Law, Complainants are entitled to relief and repurchase of their 2017 Cadillac Escalade under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

1. Respondent shall accept the return of the vehicle from Complainants. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainants. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$61,389.49**. The refund shall be paid to Complainants and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainants. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainants are responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address

and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

### ORDER

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

**SIGNED October 18, 2019**



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