

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0006337 CAF**

**ANITRA PRICE,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Anitra Price (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 her vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that the subject vehicle qualifies for warranty repair relief.

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 July 9, 2019, at the Texas Department of Motor Vehicles Regional Service Center in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for herself. Jarmaine Bingham, the Complainant's husband, also appeared and testified for the Complainant. Shirley Calderon-Pagan, consumer affairs legal analyst, represented and testified for the Respondent. Asad Bashir, automotive technical specialist, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the 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 trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁴ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).²⁵ 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 December 5, 2016, the Complainant, purchased a new 2017 Ford Fusion from Joe Myers Ford, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had four 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 February 7, 2019, the Complainant, provided a written notice of defect to the Respondent. On February 26, 2019, the Complainant filed a complaint with the Department alleging that the air conditioning (AC) turned on by itself; the radio would turn on and would not turn off; the left turn signal would blink when

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).

turning the right turn signal on and vice-versa; and the vehicle died and had to be towed. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
March 15, 2017	5,431	AC comes on by itself
June 2, 2017	10,933	AC comes on by itself
August 12, 2017	14,521	AC comes on by itself
January 19, 2018	24,341	The left turn signal would blink when turning the right turn signal on and vice-versa
March 10, 2018	28,439	Radio comes on by itself and will not turn off
January 21, 2019	49,227	Radio and AC come on by themselves
February 6, 2019	50,268	Vehicle would not start; the left turn signal would blink when turning the right turn signal on and vice-versa

The Respondent's opportunity to repair (field service engineer inspection) occurred on March 28, 2019, at 50,268 miles.

The Complainant testified the air conditioning turned on by itself while driving the vehicle. The air conditioning turned itself on randomly approximately once or twice a month. The first time the issue was noticed was about four or five months after the purchase of the vehicle. The issue was last noticed in February 2019, prior to taking the vehicle in for service. On the first repair attempt on March 15, 2017, the dealership told the Complainant they were unable to duplicate the issue and returned the vehicle with no repairs made. On June 2, 2017, during an oil change, the Complainant told the dealership the vehicle was still having issues with the air conditioning. The dealership informed the Complainant they found no issue with the air conditioning but there was a recall on a screw in the steering wheel, which the dealership replaced. On August 12, 2017, the Complainant brought the vehicle to the dealership because the air conditioning randomly turned on again. The Complainant informed the dealership that his wife was anemic and did not turn the air conditioning on. The dealership stated the issue was caused because the Complainant was not using the air conditioning enough and they replaced the cabin filter. The air conditioning turned itself on and off more frequently before the last repair attempt on February 5, 2019.

The Complainant testified that upon starting the vehicle the radio turned on by itself. The Complainant turned everything off in the vehicle the day before the radio turned itself on. The radio turned itself on twice. Mr. Bingham testified that the last time the issue was noticed was on September 25, 2018.

The Complainant testified that when the right turn signal was activated the left indicator light on the dashboard activated, instead of the right indicator light. Conversely, when the left turn signal was activated the right indicator light on the dashboard activated. The Complainant was unaware if the indicator lights on the outside of the vehicle were also reversed. The issue with the turn signals occurred every time the turn signal was used. The turn signal issue was first brought to the attention of the dealership on January 19, 2018. The issue was last noticed when dropping off the vehicle for the February 2019 repair attempt.

The Complainant testified the vehicle died when she was driving the vehicle in a parking lot. The vehicle was at the dealership for repair a few days prior to the vehicle dying. Mr. Bingham stated that the vehicle was subsequently towed to the dealership for repair. The vehicle was not driven since it was taken to the dealership. During the last repair the dealership repaired the power control module. However, when the vehicle was towed to the dealership, the dealership told the Complainant that the module shorted out and they needed to replace the battery and reset the power control module. The vehicle never exhibited battery or power control module issues at any during the previous repair attempts. The Complainant expressed concern that there is an underlying issue that caused the battery to drain. Technicians at the dealership told the Complainant the issue was unique to the Complainant's vehicle. The vehicle would not turn on the day before the hearing and had to be charged so Mr. Bingham could get in the car and check the mileage.

On cross-examination, Mr. Bingham testified that the air conditioning and the radio issues were brought to the attention of the dealer as of June 2017. The repair invoice had no information concerning the air conditioning or radio issues because the dealership was unable to duplicate the issues. The dealership replaced the cabin filter in response to the complaints but not because of an actual issue. With respect to the indicator lights, the dealership was also unable to duplicate the issue. The Complainant took a video of the malfunction and showed the dealership. However, because the dealership was unable to be duplicated the issue, the issue was not recorded in the invoices. The Complainant asserted that the vehicle was brought in multiple times for the issues.

On cross-examination the Complainant clarified that the dealership replaced the IPC (instrument panel control) module. Mr. Bingham explained that after the vehicle died, the Complainant was told by the dealership that the power control module needed to be reset and the vehicle's battery replaced. The Complainant did not receive any paperwork regarding the power

control module and battery replacement because the vehicle was not picked up from the dealership. When the power control module was reset it was also reprogrammed. The Complainant was never informed why the module needed to be reprogrammed. Mr. Bingham testified that after the instrument panel control module and the power control module were replaced the dealership could not find any other problems. However, after repair of both modules and software updates for the modules, the battery of the vehicle died and was subsequently replaced. The newly installed battery also drained completely and the vehicle was unable to start. Mr. Bingham testified he was required to pay for the repairs despite an active warranty and an extended warranty that covered the issues. The extended warranty was purchased at the time of purchase of the vehicle from Joe Myers Ford Lincoln and covered the vehicle for 75,000 miles.

On rebuttal, Mr. Bingham testified that with respect to the safety hazard provision of the Texas Lemon Law, the vehicle died while it was driven and was therefore a serious safety hazard. He also stated he had no control over what the dealership recorded on their reports. The dealership did not document all issues or visits. Mr. Bingham went to the dealership to obtain the documents but many documents had been lost. During that same visit the dealership lost the vehicle on their lot. It took the dealership days to find the vehicle and then an additional week to get a technician to repair the vehicle. While the vehicle was lost the dealership alleged that the Complainant picked up the vehicle despite the vehicle being on their lot. No repair attempt was made on the issues raised by Complainant until the vehicle reached over 28,000 miles and the Complainant brought a video demonstrating the issues.

Upon clarification questions, Mr. Bingham explained that the written notice of defect (sent February 7, 2019) to the Respondent identified the issues with the AC, turn signals, radio, PCM, and battery.

C. Summary of Respondent's Evidence and Arguments

Ms. Calderon-Pagan testified that the vehicle did not qualify for repurchase or replacement because the service history did not show there was a reasonable number of repair attempts. The issue with the radio was not recorded by the dealership until after the vehicle reached 28,000 miles. The radio only had three repair attempts. Additionally, the radio and air conditioning issues were not reported until after more than 12,000 miles and more than twelve months had passed. The repair attempts did not fall within the presumption period, therefore, the vehicle did not qualify for

repurchase or repair. The dealership was unable to duplicate the issues and were unable to make a repair. The dealership had discretion to record the issues raised by the Complainant but they did not. Ms. Calderon-Pagan stated the vehicle needed reprogramming.

Mr. Bashir testified that the instrument panel cluster had issues with black outs and the trouble codes indicated there was a loss of communication with several modules within the instrument panel cluster. The dealership performed a diagnostic test and found the instrument panel cluster was not responding. Mr. Bashir stated the turn signal issue could be related to the problem with the instrument panel cluster.

D. Analysis

1. Filing Deadline for Repurchase or Replacement

As explained in the discussion of applicable law, to qualify for repurchase or replacement relief, the Lemon Law requires the complaint to have been filed no later than six months after the earliest of: (1) the expiration of the express warranty; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner. In this case, the earliest of these dates falls on the day which 24,000 miles have passed. Specifically, given four miles on the odometer at the time of purchase on December 5, 2016, and 24,341 miles at the January 19, 2018, repair visit, interpolation shows that the vehicle passed 24,000 miles (24,004 miles on the odometer) about January 13, 2018. Accordingly, the complaint must have been filed by July 13, 2018, six months after January 13, 2018. However, the complaint was filed on February 26, 2019, approximately seven months past the deadline. Consequently, the Lemon Law prohibits granting repurchase or replacement relief.

2. Warranty Repair Relief

A preponderance of the evidence does not show that the vehicle has any currently existing issues covered by the Respondent's original warranty. To qualify for warranty repair relief the vehicle must have a currently existing defect covered by warranty. In the present case, the warranty expired at 36,000 miles after delivery (36,004 miles on the odometer), between June 2, 2018, at 33,988 miles and September 7, 2018, at 39,934 miles according to the repair invoices (interpolation shows an approximate expiration date of July 4, 2019). Consequently, any issues reported after 36,000 miles after delivery are not covered by the Respondent's warranty (the purchase agreement

shows a service contract for 60 months or 75,000 miles but the evidence does not show that this is a warranty issued by the Respondent).

a. AC Will Not Turn Off

The Complainant last noticed the AC issue before taking the vehicle in for the last repair attempt on February 6, 2019. However, the evidence does not show that this issue continued after the last repair since the Complainant did not retrieve the vehicle and inspect it for the AC issue. Because the evidence does not show the AC issue currently exists, this issue does not support any relief.

b. Turn Signal Reversed

The Complainant last noticed the turn signal issue before taking the vehicle in for the last repair attempt on February 6, 2019. As with the AC issue, the evidence does not show that this issue continued after the last repair since the Complainant did not retrieve the vehicle and inspect it. Because the evidence does not show the issue currently exists, this issue does not support any relief.

c. Radio Will Not Turn Off

Mr. Bingham stated that the radio issue last occurred on September 25, 2018. As further explained below, this issue appears to continue to exist. Therefore, this issue supports repair relief.

d. Vehicle Shut Down, Would Not Start

The evidence shows that the vehicle first shut down in February of 2019, which would appear to fall outside of the warranty's coverage. However, the field service engineer suspected that the vehicle suffered from battery drain caused by the radio powering up on its own. In other words, the evidence indicates that the vehicle's failure to start is a part of the radio issue described above. Significantly, the day before the hearing, the vehicle needed to be charged to allow Mr. Bingham to enter the vehicle and obtain the odometer reading, indicating that the radio issue continues to exist and continues to drain the battery. Accordingly, this issue qualifies for repair relief.

III. Findings of Fact

1. On December 5, 2016, the Complainant, purchased a new 2017 Ford Fusion from Joe Myers Ford, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had four 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
March 15, 2017	5,431	AC comes on by itself
June 2, 2017	10,933	AC comes on by itself
August 12, 2017	14,521	AC comes on by itself
January 19, 2018	24,341	The left turn signal would blink when turning the right turn signal on and vice-versa
March 10, 2018	28,439	Radio comes on by itself and will not turn off
January 21, 2019	49,227	Radio and AC come on by themselves
February 6, 2019	50,268	Vehicle would not start; the left turn signal would blink when turning the right turn signal on and vice-versa

4. The Respondent's opportunity to repair (field service engineer inspection) occurred on March 28, 2019, at 50,268 miles.
5. On February 7, 2019, the Complainant, provided a written notice of defect to the Respondent.
6. On February 26, 2019, the Complainant filed a complaint with the Department alleging that the air conditioning (AC) turned on by itself; the radio would turn on and would not turn off; the left turn signal would blink when turning the right turn signal on and vice-versa; and the vehicle died and had to be towed.
7. On April 12, 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.
8. The hearing in this case convened on July 9, 2019, at the Texas Department of Motor Vehicles Regional Service Center in Houston, Texas, before Hearings Examiner Andrew

Kang, and the record closed on the same day. The Complainant, represented and testified for herself. Jarmaine Bingham, the Complainant's husband, also appeared and testified for the Complainant. Shirley Calderon-Pagan, consumer affairs legal analyst, represented and testified for the Respondent. Asad Bashir, automotive technical specialist, testified for the Respondent.

9. The vehicle's odometer displayed 50,268 miles on the day of the hearing.
10. The warranty expired upon the vehicle reaching 36,004 miles (36,000 miles after delivery).
11. The radio turning on by itself causes the battery to drain. The day before the hearing, the vehicle's battery required charging to allow Mr. Bingham to enter the vehicle and obtain the odometer reading.

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 timely file the complaint for repurchase or replacement relief. The proceeding must have been commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months

- or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner. TEX. OCC. CODE § 2301.606(d).
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
 8. 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).
 9. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
 10. 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.
 11. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. 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**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle's radio powering on by itself and the related battery drain to the applicable warranty as specified here. Upon this Order becoming final under Texas Government Code § 2001.144:²⁷ (1) the Complainant shall deliver the vehicle to the Respondent within 20 days;

²⁷ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order

and (2) the Respondent shall complete the repair of the vehicle within **20 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED September 9, 2019



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

overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.