

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0006794 CAF**

**MIRIAM C. GONZALES and
CLAUDIA P. LOPEZ GONZALES,
Complainants**

v.

**GENERAL MOTORS LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Miriam C. Gonzales and Claudia P. Lopez Gonzales (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2018 Chevrolet Malibu. Complainants assert that the vehicle is defective because it doesn't engage in reverse or accelerate at times, it loses power and goes limp, it jerks forward at times, there was a rattling sound from the right front of the vehicle, the USB port didn't work, there was a water sound from behind the dashboard, and the turn indicator (blinker) wouldn't turn off at times. General Motors LLC (Respondent) argued that the vehicle is operating as designed, does not have a defect, and that no relief is warranted. 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 on September 11, 2019, in Carrollton, Texas before Hearings Examiner Edward Sandoval. Claudia P. Lopez Gonzales, co-Complainant, appeared and represented Complainants at the hearing. Julio C. Lopez Cardona, Ms. Lopez Gonzales' husband, and Andrew Gonzales, Ms. Lopez Gonzales' father, were present to offer testimony for Complainants. Kytzia Luna, Ms. Lopez Gonzalez' sister, testified telephonically. Respondent was represented by Clifton Green, Business Resource Manager. Irfaun Bacchus, Field Service Engineer, appeared and offered testimony for Respondent. The hearing record closed on September 11, 2019.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met.

First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to 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.⁶

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.⁷

“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.⁸

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a) (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.

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁸ Tex. Occ. Code § 2301.601(4).

B. Complainant's Evidence and Arguments

Complainants purchased a new 2018 Chevrolet Malibu on June 5, 2018, from Young Chevrolet (Young) located in Dallas, Texas.⁹ The vehicle's mileage at the time of delivery was 7.¹⁰ Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.¹¹ Respondent also issued a warranty for the vehicle's powertrain providing coverage for five (5) years or 60,000 miles.¹² On the date of hearing the vehicle's mileage was 26,876. At the time of hearing the vehicle's warranties were still in effect.

1. Claudia P. Lopez Gonzales' Testimony

Claudia P. Lopez Gonzales, co-Complainant, represented Complainants and testified in the hearing. She is the primary driver of the vehicle. Ms. Gonzales stated that she feels that the vehicle is defective because of several issues that she has experienced since purchasing it. She stated that the vehicle fails to engage at times, it loses power, it goes limp, and it jerks forward. In addition, she has experienced other issues with the vehicle: the USB port didn't work, she heard a water sound from behind the dashboard, and the turn indicator (blinker) would not turn off.

Ms. Gonzales stated that she first experienced an issue with the vehicle about two months after purchasing it. She was trying to back out of a parking space in a parking lot. She shifted the vehicle's transmission into reverse and the vehicle would not move. Ms. Gonzales stated that the vehicle did not move, even though she was stepping on the accelerator pedal. When the vehicle finally moved, it accelerated quickly. In addition, the vehicle's USB port did not work and her phone wouldn't connect to the vehicle's communication system. Ms. Gonzales took the vehicle to Young for repair for the issues on August 11, 2018. (See the table below for specifics on the repair visit.) The vehicle was in Young's possession for almost two (2) weeks. Complainants received a loaner vehicle while their vehicle was being repaired.

Ms. Gonzales testified that she was still experiencing problems with the vehicle refusing to respond to the accelerator pedal, not only when shifting into reverse, but also when shifting into drive. Ms. Gonzales stated that she also began experiencing a problem with the vehicle going limp for four (4) to five (5) seconds at a time. Ms. Gonzales explained that the vehicle's engine felt like it was going to die when this occurred. This was happening about once or twice a week.

⁹ Complainant Ex. 3, Retail Purchase Agreement dated June 5, 2018.

¹⁰ Complainant Ex. 5, Odometer Disclosure Statement dated June 5, 2018

¹¹ Complainant Ex. 6, Warranty Coverage at a Glance, Document ID: 425833, undated.

¹² *Id.*

Ms. Gonzales took the vehicle to Young for repair for the issues on September 10, 2018. (See the table below for specifics on the repair visit.) The vehicle was in Young's possession for eleven (11) days. Complainants received a loaner vehicle while their vehicle was being repaired.

Ms. Gonzales testified that she continued to experience problems with the vehicle's failure to accelerate when shifting into gear and with it going limp. Ms. Gonzales also stated that the vehicle seemed to jerk forward when it was at a stop. In addition, she began to hear a rattle from the right side of the vehicle. Ms. Gonzales took the vehicle to Young for repair for the issues on October 4, 2018. (See the table below for specifics on the repair visit.) The vehicle was in Young's possession for six (6) days. Complainants received a loaner vehicle while their vehicle was being repaired.

Ms. Gonzales stated that when she got the vehicle back from Young, she began to experience issues with it accelerating while on the highway. She stated that when she attempted to switch lanes, the vehicle would not accelerate properly and would jerk forward. This would occur intermittently, about five (5) or six (6) times a month. Ms. Gonzales took the vehicle back to Young for repair on January 8, 2019. (See the table below for specifics on the repair visit.) The vehicle was in Young's possession for 23 days. Complainants received a loaner vehicle while their vehicle was being repaired.

Ms. Gonzales continued to experience the same problems with the vehicle (not accelerating, lacking throttle response, jerking forward, and going limp) and took the vehicle to Young for repair on February 16, 2019. (See the table below for specifics on the repair visit.) The vehicle was in Young's possession for over a month. Complainants received a loaner vehicle while their vehicle was being repaired.

Date	Mileage	Issues	Repairs Performed
August 11, 2018	6,263	1. USB Port doesn't work 2. Vehicle Reverse doesn't engage	1. Unable to duplicate 2. Cleaned throttle body
September 10, 2018	7,518	Vehicle will not accelerate or reverse when shifting into gear	Adjusted shift cable
October 4, 2018	8,403	1. Vehicle will not engage in reverse or drive/lacks power 2. Rattling sound from right side of vehicle	1. No problem found 2. No problem found
January 8, 2019	14,321	Vehicle lacks power when accelerating/also jerks forward at times	Replaced Accelerator pedal
February 16, 2019	15,357	Vehicle lacks power and throttle response	Programmed Engine Control Module (ECM)

On March 6, 2019, Complainants wrote a letter to Respondent advising them of their dissatisfaction with the vehicle.¹³ Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicle (Department) on March 12, 2019.¹⁴

Ms. Gonzales testified that after filing the Lemon Law complaint, she began experiencing other problems with the vehicle. The turn indicator (blinker) would not turn off. Ms. Gonzales stated that she began to hear water noises from behind the vehicle's dashboard. In addition, the vehicle was still suffering from lack of acceleration, jerking, going limp.

Complainants took the vehicle to Young for repair on July 19, 2019, in response to a request from Respondent's representative that they be allowed a final inspection of the vehicle. Complainants had three issues with the vehicle that they felt needed to be addressed: the vehicle's lack of power/lack of throttle response and jerking, the turn indicator not turning off (it had failed to turn off once prior to the repair visit), and a water noise from behind the vehicle's dashboard. Respondent's field service engineer (FSE) inspected the vehicle and determined that the vehicle was operating normally in regards to the acceleration and jerking issues.¹⁵ The FSE was unable to find a problem with the turn indicator not turning off.¹⁶ Regarding the issue of the water sound from behind the dashboard, the FSE determined that the noise was occurring because the vehicle's cooling system was not full.¹⁷ The service technician evacuated and filled the cooling system to resolve the issue.¹⁸ The vehicle's mileage at the time was 23,936.¹⁹ The vehicle was in Young's possession until July 29, 2019.²⁰ Complainants were provided with a rental vehicle while their vehicle was being repaired.²¹

Ms. Gonzales stated that she does not feel that the vehicle is reliable. She doesn't feel safe when driving the vehicle. It's not acting as it should and doesn't accelerate properly. She has driven the vehicle on long trips and it has failed to accelerate at times which makes her feel unsafe. She doesn't want to be stranded on the side of the ride if the vehicle breaks down. (Ms. Gonzales did state that the vehicle has not failed to start and that she has not been stranded since purchasing the vehicle.) The issues occur randomly. She could not recall the last time that the vehicle failed to engage or move after shifting the transmission into gear. However, she has experienced the lack of acceleration issue occur when driving the vehicle approximately two (2) weeks prior to

¹³ Complainant Ex. 14, Letter to General Motors dated March 6, 2019.

¹⁴ Complainant Ex. 1, Lemon Law Complaint dated March 12, 2019.

¹⁵ Complainant Ex. 13, Repair Order dated July 19, 2019.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

the hearing date. She said that the type of road or the speed at which she is driving do not seem to affect the issue.

3. Andrew Gonzales' Testimony

Andrew Gonzales, Ms. Lopez Gonzales' father, testified for Complainants. He stated that he drove the vehicle on one occasion when Ms. Lopez Gonzales was visiting relatives in Amarillo, Texas in October of 2018.

Mr. Gonzales stated the he was driving the vehicle on a highway in the area. He was driving around 70 mph when the vehicle's speed for no reason dropped to about 50 mph. Mr. Gonzalez noticed on the tachometer that the engine RPMs increased when he stepped on the vehicle's accelerator to get back up to speed and that the vehicle took about five (5) to six (6) seconds to respond to the accelerator.

4. Julio C. Lopez Cardona's Testimony

Julio C. Lopez Cardona, Ms. Lopez Gonzales' husband, testified for Complainants. Mr. Lopez Cardona testified that he drives the vehicle occasionally, usually on weekends. He stated that he has experienced situations where the vehicle will not accelerate properly. However, he doesn't recall the last time it happened in the six (6) months prior to the hearing.

5. Kytzia Luna's Testimony

Kytzia Luna, Ms. Lopez Gonzalez's sister, testified telephonically in the hearing for Complainants. Ms. Luna stated that she drove the vehicle when Ms. Lopez Gonzalez went to Amarillo for Christmas in 2018.

Ms. Luna stated that she was driving the vehicle after backing it out of a driveway and that the vehicle would not accelerate. Ms. Luna stated that she stepped on the vehicle's accelerator pedal and that the vehicle would not respond immediately. After a few seconds the vehicle responded and then jerked back and forth before taking off. The vehicle's engine did not die, the vehicle wouldn't accelerate however.

C. Respondent's Evidence and Arguments

1. Clifton Green's Testimony

Clifton Green, Business Resource Manager, represented and testified for Respondent. Mr. Green testified about Respondent's warranties for the vehicle. He stated that the bumper-to-bumper warranty provided coverage for three (3) years or 36,000 miles. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles.

2. Irfaun Bacchus' Testimony

Irfaun Bacchus, Respondent's FSE, testified for Respondent. Mr. Bacchus has worked for 18 years in the automotive industry. Prior to being hired by Respondent, Mr. Bacchus worked for two (2) different automobile dealers as a team leader. Mr. Bacchus was hired into his present position by Respondent five (5) years ago. Mr. Bacchus is an Automotive Service Excellence (ASE) Master Certified Technician. In addition, he is certified as a GM World Class Technician.

Mr. Bacchus testified that he inspected the vehicle on July 19, 2019, at Young's location. Prior to inspecting the vehicle, Mr. Bacchus reviewed the prior work orders for the vehicle. He was informed that Complainants' concerns were that the vehicle jerked and lacked power at times. In addition, he was informed that there were additional concerns with the vehicle's turn indicator not turning off and a water noise from behind the vehicle's dashboard. Mr. Bacchus testified that he checked the vehicle's ECM and transmission control module (TCM) which both seemed to be okay. In addition, Mr. Bacchus checked the vehicle's computers for diagnostic trouble codes (DTCs) and found none. Mr. Bacchus test drove the vehicle about ten (10) miles and did not feel that the vehicle lacked power or hesitated. As a result, Mr. Bacchus did not recommend any repairs for the issue.

Mr. Bacchus testified that he also checked the vehicle's turn indicator and was unable to duplicate the issue. As a result, no repair was performed for this issue.

Finally, Mr. Bacchus checked the vehicle for the issue regarding water noise from behind the vehicle's dashboard. He determined that the sound was due to the fact that the vehicle's cooling system was not full. Mr. Bacchus had Young's technician top off the vehicle's coolant in order to address the issue.

Mr. Bacchus testified that he does not feel that the vehicle is unsafe. He stated that he would not have any problems driving the vehicle regularly. Mr. Bacchus feels that the vehicle's power level is characteristic of the vehicle. He does not feel that there is anything abnormal about the vehicle.

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 the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainants are required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainants are entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainants' vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainants raised several issues with the vehicle, these were: the vehicle doesn't engage in reverse or accelerate at times, the vehicle loses power and goes limp, the vehicle jerks forward at times, there was a rattling sound from the right front of the vehicle, the USB port didn't work, there was a water sound from behind the dashboard, and the turn indicator (blinker) wouldn't turn off at times.

1. Vehicle Fails to Engage Issue

The first issue raised by Complainants was that the vehicle failed to engage when the transmission was shifted into reverse or drive. The evidence presented at hearing indicates that this was a recurring problem that happened intermittently. The vehicle was taken to Young for repair for the issue on at least three (3) occasions: August 11, 2018; September 10, 2018; and October 4, 2018. After October 4, 2018, the issue was no longer raised on any of the repair orders submitted by Complainants as evidence. In addition, Ms. Gonzales' testimony indicated that she could not recall the last time that the problem had occurred. Thus, the evidence indicates that issue has been repaired. Since the concern no longer exists and has been repaired, it does not provide grounds to order repurchase or replacement of the vehicle.

2. Vehicle Loses Power/Goes Limp/Jerks Forward Issue

The totality of the evidence presented at the hearing established that the vehicle intermittently loses power, goes limp, and/or jerks forward intermittently. The evidence indicates that the vehicle lacks acceleration or throttle response when the vehicle is being driven. (Complainants have classified this as the vehicle losing power or going limp.) This has caused concerns with the driver accelerating into traffic or attempting to pass other vehicles. The lack of response from the vehicle's accelerator is disconcerting and concerning. In addition, when the vehicle does accelerate it seems to jerk forward. The first hand testimony provided by Complainants indicates that the problem continues to occur despite several repair attempts by the dealer's service technicians. As such, the hearing examiner must hold that Complainants have met the burden of persuasion to establish the existence of a defect or nonconformity (the vehicle losing power, lacking acceleration/throttle response, going limp, and/or jerking forward) in the subject vehicle. The defect or nonconformity with the vehicle creates a serious safety hazard as defined in the Occupations Code in that it impedes the driver's ability to control or operate the vehicle for ordinary use 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 dealer on two (2) separate occasions for repair for the complained of issue prior to the filing of the Lemon Law complaint: January 8, 2019 and February 16, 2019. 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) provides that for a vehicle that 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. 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 March 6, 2019, of the various concerns they had with the vehicle and providing Respondent with an opportunity to cure. Respondent had its field service engineer inspect the vehicle on July 9, 2019. The only repair to the vehicle performed at the time was to resolve the issue regarding a water noise from behind the dashboard. There was no repair performed for the issue of the vehicle intermittently losing power, going limp, and/or jerking forward intermittently.

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. Therefore, the hearings examiner will order Respondent to repurchase the vehicle as requested by Complainants.

3. Rattling Noise Issue

Complainants raised the issue of a rattling noise coming from the passenger side of the vehicle. When the vehicle was taken for repair for the issue, the service technician was not able to duplicate the issue. No other repairs were performed for the issue and Complainants did not present testimony to indicate that the problem was still occurring. As such, the hearings examiner must hold that the issue has been resolved. However, even if the issue has not been resolved, Complainants did not raise the issue for repair after the October 4, 2018 repair. Respondent was not provided a reasonable number of attempts to repair the concern. As such, the hearings examiner must hold that this issue does not constitute a defect with the vehicle which warrants repurchase or replacement of the vehicle.

4. USB Port Not Working Issue

Complainants raised the issue of the vehicle's USB port not working. When the vehicle was taken for repair for the issue, the service technician was not able to duplicate the issue. No other repairs were performed for the issue and Complainants did not present testimony to indicate that the problem was still occurring. As such, the hearings examiner must hold that the issue has been resolved. However, even if the issue has not been resolved, Complainants did not raise the issue for repair after August 11, 2018. Respondent was not given a reasonable number of attempts to repair the concern. As such, the hearings examiner must hold that this issue does not constitute a defect with the vehicle which warrants repurchase or replacement of the vehicle.

5. Water Sound Behind the Dashboard Issue

Ms. Gonzalez raised the issue that she was hearing a water noise from behind the vehicle's dashboard. The issue was verified during the inspection by the FSE on July 19, 2019. He determined that the issue was caused by the vehicle's coolant level being low. After the cooling system was evacuated and refilled, the issue was resolved. Since the issue has been repaired and is no longer occurring, repurchase or replacement of the vehicle for this issue is not warranted.

6. Turn Indicator Won't Turn Off Issue

Complainants raised the issue that the vehicle's turn indicator wouldn't turn off. The testimony presented at hearing indicated that this occurred once prior to the final inspection of the vehicle in July of 2019. During the inspection by the FSE, he indicated that the turn indicator was operating as designed. In addition, the issue has not recurred. Therefore, the hearings examiner must hold that there is no evidence to indicate that the vehicle's turn indicator is defective. As such, repurchase or replacement of the vehicle for this issue is not warranted.

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. Miriam C. Gonzales and Claudia P. Lopez Gonzales (Complainants) purchased a new 2018 Chevrolet Malibu on June 5, 2018, from Young Chevrolet (Young) located in Dallas, Texas with mileage of 7 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 which provides coverage for three (3) years or 36,000 miles, whichever occurs first. They also provided a powertrain warranty providing coverage for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 26,876.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Complainants feel that the vehicle is defective because it doesn't engage in reverse or accelerate at times, it loses power and goes limp, it jerks forward at times, there was a

rattling sound from the right front of the vehicle, the USB port didn't work, there was a water sound from behind the dashboard, and the turn indicator (blinker) wouldn't turn off at times.

6. Complainants took the vehicle for repair to Respondent's authorized dealers in order to address their concerns with the vehicle on the following dates:
 - a. August 11, 2018, at 6,2635 miles;
 - b. September 10, 2018, at 7,518 miles;
 - c. October 4, 2018, at 8,403 miles;
 - d. January 8, 2019, at 14,321 miles and
 - e. February 16, 2019, at 15,357.
7. On August 11, 2018, Young's service technician cleaned the vehicle's throttle body in order to address Complainants' concern that the vehicle would not accelerate once the transmission was placed in reverse. The service technician was not able to recreate a concern with the vehicle's USB port, after Complainants indicated that the port was not working.
8. On September 10, 2018, Young's service technician adjusted the vehicle's shift cable in order to address Complainants' concern that the vehicle was not accelerating after the transmission was put in gear.
9. On October 4, 2018, Complainants indicated two concerns with the vehicle: the vehicle lacked power (wouldn't engage if transmission put in reverse or drive) and when accelerating in the vehicle a metallic rattle was heard on the right side of the vehicle. Young's service technician was unable to recreate either concern.
10. On January 8, 2019, Young's service technician replaced the vehicle's acceleration pedal to address Complainants' concerns that the vehicle lacked power when accelerating and that the vehicle would jerk forward on occasion.
11. On February 16, 2019, Young's service technician programmed the vehicle's engine control module (ECM) to address Complainants' concern that the vehicle loses power and lacked throttle response at times.
12. On March 6, 2019, Complainants mailed a letter to Respondent advising them of their dissatisfaction with the vehicle.

13. On March 12, 2019, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On July 19, 2019, Respondent's field service engineer (FSE) inspected the vehicle at Respondent's request at Young's location.
15. During the inspection performed on July 19, 2019, Respondent's FSE determined that the vehicle was operating normally and did not find a problem with the vehicle's throttle response and did not experience the vehicle jerking back and forth.
16. Also, during the FSE inspection, the FSE determined that the turn signal was operating as designed. However, he determined that the vehicle's cooling system was not full which was causing Complainants to hear a water noise behind the dashboard. The cooling system was evacuated and refilled to address the concern.
17. The vehicle intermittently still fails to accelerate properly and suffers from lack of throttle response with the last incident occurring about two weeks prior to the hearing date.

18. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$23,747.03
Delivery mileage	7
Mileage at first report of defective condition	6,263
Mileage on hearing date	26,876
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$23,747.03
Mileage at first report of defective condition					6,263
Less mileage at delivery					<u>-7</u>
Unimpaired miles					6,256
Mileage on hearing date					26,876
Less mileage at first report of defective condition					<u>-6,263</u>
Impaired miles					20,613
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
					<u>6,256</u>
	120,000	X	\$23,747.03	=	\$1,238.01
Impaired miles					
					<u>20,613</u>
	120,000	X	\$23,747.03	X .5	= <u>\$2,039.57</u>
Total reasonable allowance for use deduction:					\$3,277.58
Purchase price, including tax, title, license and registration					\$23,747.03
Less reasonable allowance for use deduction					-\$3,277.58
Plus filing fee refund					<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT					\$20,504.45

19. On May 31, 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.

20. The hearing in this case convened on September 11, 2019, in Carrollton, Texas before Hearings Examiner Edward Sandoval. Claudia P. Lopez Gonzales, co-Complainant, appeared and represented Complainants at the hearing. Julio C. Lopez Cardona, Ms. Lopez Gonzales' husband, and Andrew Gonzales, Ms. Lopez Gonzales' father, were present to offer testimony for Complainants. Kytzia Luna, Ms. Lopez Gonzalez' sister, testified telephonically. Respondent was represented by Clifton Green, Business Resource Manager. Irfaun Bacchus, Field Service Engineer, appeared and offered testimony for Respondent. The hearing record closed on September 11, 2019.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. 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 creates a serious safety hazard (the vehicle's lack of throttle response and lack of acceleration). 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 2018 Chevrolet Malibu 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 **\$20,504.45**. 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 31st 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 November 12, 2019.



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