

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0008394 CAF**

**STEVEN D. ALDRETE,
Complainant**

v.

**FCA US LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Steven D. Aldrete (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle manufactured by FCA US LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has warrantable defects that qualify for warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on November 19, 2019, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 22, 2019, the date Complainant's Exhibit 5 was admitted. The Complainant, represented himself. Jan Kershaw, early resolution case manager, represented the Respondent.

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

¹ TEX. GOV'T CODE § 2001.051.

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 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

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

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).

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:

[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

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).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

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 or someone on behalf of the owner, or the Department has 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 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

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). 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent may satisfy the requirement to provide notice of the defect or nonconformity to the Respondent.

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.

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

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 for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to

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.”).

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

hearing issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle's loss of use because of the defect.²⁴ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle's failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).²⁵ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁶

B. Summary of Complainant's Evidence and Arguments

On January 21, 2018, the Complainant, purchased a new 2018 Dodge Durango from Ancira Chrysler Jeep Dodge Ram, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 14 miles on the odometer at the time of purchase. The vehicle's limited warranty provides basic coverage for three years or 36,000 miles, whichever occurs first. On or before September 12, 2018, Valerie Cuellar, on behalf of the Complainant, provided a written notice of defect to the Respondent. On April 19, 2019, the Complainant filed a complaint with the Department alleging the following issues:

1. *Vehicle pulling to the right*
2. *Vehicle pulling to the left*

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).

3. *Key fob not registering - stating the key fob has left the vehicle when it is in the vehicle*
4. Radio Power Cycling
5. Radio Freezing
6. Heater not working in back seat
7. *Heater turning up to max temperature in back seat*
8. Air cycle button turning off by itself

Ms. Cuellar indicated that the issues regarding the vehicle pulling right/left, key fob not registering, and heater turning up to maximum temperature were resolved, leaving only the radio power cycling, radio freezing, heater not working in the back, and the air cycle (recirculation) button turning off for resolution in this proceeding. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
July 23, 2019		
August 1, 2019	31,301	Rear heater inoperable
April 19, 2019		Vents at back seat not working, radio freezing, air
April 30, 2019	25,740	circulation button turns off by itself
	19,362	Overhead blows cold
	14,977	Radio shuts off and power cycles,
	3,544	Loss of power to radio screen

Ms. Cuellar stated that the air cycle button would blink several times and not stay on but would stay on longer after driving a little while but would not stay on for the duration of an entire trip. Ms. Cuellar testified that she was the primary and only driver of the subject vehicle. She last noticed the radio power cycling the month before the hearing when driving. The radio would not respond. She affirmed that the touchscreen, including climate and radio controls, would not respond. She elaborated that not just the radio but all controls that used the touchscreen would malfunction about once a month. She added that the month before the hearing, the air conditioning (AC) would not work and she had to pull over, turn off the vehicle and restart to get the AC working. Ms. Cuellar affirmed that turning the vehicle on and off would make the touchscreen work, though sometimes requiring two attempts. She confirmed that the touchscreen would sometimes turn on and off by itself, which she last noticed the month before the hearing. She acknowledged that the touchscreen's unresponsiveness and power cycling would occur at the same time. She described the power cycling and freezing as random. Ms. Cuellar explained that the heater was cold when initially taken in and required replacement of the coil. Previously during

the summer, the heater would turn on full blast in the rear. She had not noticed the heater malfunctioning in the rear. The air cycle button malfunction last occurred on the day of the hearing. Ms. Cuellar described the air cycle button would randomly malfunction every time when using the AC or heater. She stated that four repair visits for the AC not turning on were not addressed in the repair orders/invoices because the dealer was not able to duplicate the issue. Ms. Cuellar confirmed that she received a loaner or rental vehicle whenever leaving the vehicle for repair. Ms. Cuellar confirmed that Bluetooth did not function when the touchscreen froze.

On cross-examination, Ms. Cuellar indicated that the radio (touchscreen) glitch would end when pulling over and turning the vehicle off and on. She confirmed that the vehicle did not leave her stranded. The AC turning off did not impair driving. She affirmed that everything shut off, including the radio, when the touchscreen turned off.

C. Inspection

Upon inspection before the test drive, the vehicle's odometer displayed 37,692 miles. The vehicle was driven on major arterial roads, a freeway, and frontage roads. Ms. Cuellar operated the touch screen controls without any issues. The AC and heat appeared to work properly. Mr. Ritchey adjusted the AC and heat controls with no problems. The test drive ended with 37,710 miles.

D. Summary of Respondent's Evidence and Arguments

Mr. Stuart Ritchey, technical advisor, testified that he looked into the controllers for fault codes but found none. He also checked the software if updated. He also checked the alignment, which was off. At the time of his inspection, the rear did not blow cold air. He test drove the vehicle, which did not exhibit any hesitation. Additionally, the vehicle never lost the key fob signal. A repair order indicated that Ms. Cuellar recently changed phones and the key fob issue did not recur. He explained that the lost key message may occur because the phone will interfere with the key fob signal. With respect to the test drive at the hearing, Mr. Ritchey did not notice any issues. The AC worked, the touchscreen never blacked out, and the rear (heater/AC) was working correctly. The Respondent concluded that the vehicle did not have reasonable repair attempts, the vehicle did not exhibit any issues during the test drive, and the vehicle operated as designed.

E. Analysis

As noted above, four issues remain to be resolved in this proceeding: the radio power cycling, radio freezing, the heater not working in back seat, and the air cycle (recirculate) button turning off by itself. As detailed below, the heater issue does not appear to exist and the other issue do not appear to have had reasonable repair attempts. Accordingly, the existing defects qualify for repair relief but not repurchase or replacement.

1. Existence of Warrantable Defect

As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect)²⁷ that continues to exist after repair.²⁸ In part, the warranty generally states that:

The Basic Limited Warranty covers the cost of all parts and labor needed to repair any item on your vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation. There is no list of covered parts since the only exception are tires and Unwired headphones. You pay nothing for these repairs. These warranty repairs or adjustments—including all parts and labor connected with them—will be made by your dealer at no charge, using new or remanufactured parts.²⁹

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³⁰ In the present case, Ms. Cuellar could not determine whether the rear heater issue continued to exist. However, the record reflects that the radio (touchscreen) power cycling, the radio (touchscreen) freezing, and the air recirculation spontaneously turning off have all recurred after repairs.

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

²⁸ TEX. OCC. CODE § 2301.605.

²⁹ Complainant's Ex. 11, Limited One-Year Warranty.

³⁰ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); see *GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

2. Reasonable Repair Attempts

A preponderance of the evidence does not show reasonable repair attempts in this case. In relevant part, the Lemon Law provides a presumption of reasonable repairs if the vehicle has had at least four repair attempts for the same defect before the earlier of the warranty expiration or the passing of 24 months or 24,000 miles after delivery. However, the repair history only shows three repairs occurring before 24,000 miles: two repairs for the radio freezing/cycling and one repair for the heater at the back seat. Ms. Cuellar testified that four visits for the AC issue were not addressed in the repair orders because the issue could not be duplicated. However, the record is unclear as to the timing of such repair attempts. Although reasonable repairs may be based on different circumstances and fewer attempts, the evidence in this case does not warrant finding reasonable repairs. As a result, the radio (touchscreen) power cycling, the radio (touchscreen) freezing, and the air recirculation issues do not support repurchase or replacement but does support repair relief.

III. Findings of Fact

1. On January 21, 2018, the Complainant, purchased a new 2018 Dodge Durango from Ancira Chrysler Jeep Dodge Ram, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 14 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides basic coverage for three years or 36,000 miles, whichever occurs first.
3. The vehicle's warranty generally states that:

The Basic Limited Warranty covers the cost of all parts and labor needed to repair any item on your vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation. There is no list of covered parts since the only exception are tires and Unwired headphones. You pay nothing for these repairs. These warranty repairs or adjustments—including all parts and labor connected with them—will be made by your dealer at no charge, using new or remanufactured parts.

4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
July 23, 2019		
August 1, 2019	31,301	Rear heater inoperable
April 19, 2019		Vents at back seat not working, radio freezing, air circulation button turns off by itself
April 30, 2019	25,740	
	19,362	Overhead blows cold
	14,977	Radio shuts off and power cycles,
	3,544	Loss of power to radio screen

5. On or before September 12, 2018, Valerie Cuellar, on behalf of the Complainant, provided a written notice of defect to the Respondent.
6. On April 19, 2019, the Complainant filed a complaint with the Department alleging the following issues:
1. Vehicle pulling to the right
 2. Vehicle pulling to the left
 3. Key fob not registering - stating the key fob has left the vehicle when it is in the vehicle
 4. Radio Power Cycling
 5. Radio Freezing
 6. Heater not working in back seat
 7. Heater turning up to max temperature in back seat
 8. Air cycle button turning off by itself
7. Ms. Cuellar indicated that the issues regarding the vehicle pulling right/left, key fob not registering, and heater turning up to maximum temperature were resolved
8. On July 17, 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.
9. The hearing in this case convened on November 19, 2019, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 22, 2019, the date

Complainant's Exhibit 5 was admitted. The Complainant, represented himself. Jan Kershaw, early resolution case manager, represented the Respondent.

10. The vehicle's odometer displayed 37,692 miles at the time of the hearing.
11. The warranty expired upon the odometer reaching 36,014 miles.
12. The vehicle operated normally during the test drive at the hearing.
13. The radio power cycling, radio freezing, and the air cycle (recirculate) issues all recurred after repair.
14. Ms. Cuellar could not determine whether the heater malfunctioned at the back seat.

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 meet the requirement for a reasonable number of repair attempts. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
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(s) 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 to the applicable warranty; specifically, the Respondent shall resolve the following issues: the radio (touchscreen) power cycling, the radio (touchscreen) freezing, and the air recirculation spontaneously turning off. Upon this Order becoming final under Texas Government Code § 2001.144:³¹ (1) the Complainant shall deliver the vehicle to the Respondent within 20 days; 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

³¹ 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 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.

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 January 21, 2020

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

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