

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0009022 CAF**

**JOHN A. and DEBORAH T. STILES,
Complainants**

v.

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

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John A. and Deborah T. Stiles (Complainants) 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 an alleged warrantable defect in their vehicle manufactured by Nissan North America, Inc. (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies 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 September 23, 2019, in Austin, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 22, 2019, upon admission of Complainants' Exhibit 10. The Complainants, represented themselves. Rafael Mariduena, dealer technical specialist, 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 Complainants.¹⁸ The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainants 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 Complainants 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 Complainants' Evidence and Arguments

On September 23, 2017, the Complainants, purchased a new 2017 Nissan Maxima from Town North Nissan, a franchised dealer of the Respondent, in Austin, Texas. The vehicle had 17 miles on the odometer at the time of purchase. The vehicle's limited warranty provides basic coverage for 36 months or 36,000 miles, whichever occurs first. On May 1, 2019, the Complainants provided a written notice of defect to the Respondent. On April 30, 2019, the Complainants filed a complaint with the Department alleging that the brakes squealed. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

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).

Date	Miles	Issue
November 6, 2018	17,518	Brake squeal
December 13, 2018- December 14, 2018	19,234	Brake squeal
February 2, 2019	20,996	Brake squeal
February 14, 2019- February 16, 2019/February 21, 2019	21,406	Brake squeal
February 28, 2019	21,963	Brake squeal
April 6, 2019- April 8, 2019	22,985	Brake squeal

When asked about the two different ready dates for the service visit at 21,406 miles, Mrs. Stiles explained that in a couple of instances when receiving the vehicle back from the dealer, the Complainants immediately took the vehicle back. Mr. Stiles testified that the brake squeal persisted for 18 months. The vehicle was taken for service at least half-a-dozen times but the issue was never resolved. At the last repair attempt, a master technician chamfered the brake pads and adjusted the rotors. The brake squeal would occur every day regardless of temperature. Mrs. Stiles, the primary driver of the vehicle, testified that she first noticed the brake noise in November of 2018. She would hear the noise daily. She estimated that the noise may have occurred 10 times a day. She last noticed the brake noise in the parking lot coming to the hearing.

C. Inspection

Upon inspection before the test drive, the subject vehicle had 29,032 miles on the odometer. The vehicle was test driven on local roads (controlled by traffic lights and stop signs), service roads, and a freeway. During the beginning of the test drive (on local roads), the vehicle's brakes squealed noticeably when stopping the first five times. The noise became less noticeable after hard stops when slowing down on the highway off ramps. Thereafter, the brake noise diminished and could not be heard. The test drive ended with 29,039 miles on the odometer. The vehicle appeared to operate normally, aside from the brake noise.

D. Summary of Respondent's Evidence and Arguments

Mr. Mariduena testified that a service bulletin explained that the brakes may normally squeak when cold and stop after warming up like the subject vehicle during the test drive at the hearing. The service bulletin indicates that squeak noise when the brakes are cold: usually occurs

during the first few stops in the morning; is a normal condition; and requires no service action.²⁷ Mr. Mariduena elaborated that the squeak was only an annoyance and would not obscure the brake pad wear indicator noise. He pointed out that the noise heard during the test drive was not the same as wear indicator noise. He explained that brake wear indicator noise would occur every time when pressing the brakes and not intermittently as with the complained of brake noise. Mr. Mariduena had previously inspected the vehicle and could not confirm the issue but requested chamfering of the brake pads. On cross-examination, Mr. Mariduena responded that he did not know how long the vehicle would have to sit for the brakes to be considered cold. Upon clarifying questions, Mr. Mariduena acknowledged that he had not heard the brake noise (repetitiveness) with other vehicles or even with the subject vehicle until the day of the hearing.

E. Analysis

As explained below, the subject vehicle qualifies for repair relief only. 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).²⁸ The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In part, the warranty generally provides that:

This warranty covers any repairs needed to correct defects in materials or workmanship of all parts and components of each new Nissan vehicle supplied by Nissan subject to the exclusions listed under the heading "WHAT IS NOT COVERED" or, if the part is covered by one of the separate coverages described in the following sections of this warranty, that specific coverage applies instead of the basic coverage.

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁹ A manufacturing defect is generally an isolated aberration occurring

²⁷ Respondent's Ex. 1, Service Bulletin BR00-004g, NTB00-033g, March 19, 2018, Brake Noise/Judder/Pedal Feel Diagnosis and Repair.

²⁸ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁹ 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

only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics (which exist before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing), are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.³⁰ In sum, the warranty only covers manufacturing defects and the Lemon Law only provides relief for warranted defects as opposed to normal design characteristics.

In the present case, the evidence clearly shows that the brakes may normally make noise; however, the extent/frequency of brake noise does not appear normal. The service bulletin indicates that normal brake noise when cold usually occurs during the first few stops in the morning. But the evidence shows that the complained of noise occurred multiple times throughout the day. On the day of the hearing, Mrs. Stiles noticed the brake noise in the parking lot before the hearing. The brake noise occurred again during the test drive, approximately 40 minutes after the start of the hearing. In other words, the vehicle's brakes squealed after cooling for less than an hour, whereas the service bulletin suggests that the noise would normally occur after sitting overnight. Moreover, regarding the brake noise during the test drive, Mr. Maridueno testified he had not heard the brake noise (repetitiveness) with other vehicles or even with the subject vehicle until the day of the hearing. In sum, a preponderance of the evidence shows that the noise, specifically the frequent repetitiveness of the noise, is a warrantable defect.

The Department's precedents hold that a noise by itself does not constitute a substantial impairment.³¹ Further, the record does not show the subject vehicle has any performance

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.").

³⁰ In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

³¹ *E.g.*, Texas Department of Transportation, *Alvarez v Ford Motor Company*, MVD Cause No. 08-0440, (Motor Vehicle Division Dec. 11, 2008) (final order denying § 2301.604 relief); State Office of Administrative Hearings *Alvarez v Ford Motor Company*, Docket No. 601-08-4215.CAF, (Oct. 9, 2008) (proposal for decision).

impairment or safety hazards associated with the complained of noise.³² Accordingly, the vehicle does not qualify for repurchase or replacement but does qualify for repair relief.

III. Findings of Fact

1. On September 23, 2017, the Complainants, purchased a new 2017 Nissan Maxima from Town North Nissan, a franchised dealer of the Respondent, in Austin, Texas. The vehicle had 17 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides basic coverage for 36 months or 36,000 miles, whichever occurs first.
3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
November 6, 2018	17,518	Brake squeal
December 13, 2018- December 14, 2018	19,234	Brake squeal
February 2, 2019	20,996	Brake squeal
February 14, 2019- February 16, 2019/February 21, 2019	21,406	Brake squeal
February 28, 2019	21,963	Brake squeal
April 6, 2019- April 8, 2019	22,985	Brake squeal

4. On May 1, 2019, the Complainants provided a written notice of defect to the Respondent.
5. On April 30, 2019, the Complainants filed a complaint with the Department alleging that the brakes squealed.
6. On July 3, 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

³² The Complainants filed a post-hearing written submission (Complainant's Exhibit 10) consisting of a news article about a brake seal recall including the subject vehicle. The complaint in this case only included the brake noise issue and the brake seal issue was raised for the first time in the post-hearing written submission. An issue raised for the first time after the hearing cannot support any relief. The brake seal recall cannot be addressed since the issue was not previously reported or included in the written notice of defect or the complaint. TEX. OCC. CODE §§ 2301.204, § 2301.606(c)(1) and 43 TEX. ADMIN. CODE § 215.202(b)(3).

- 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.
7. The hearing in this case convened on September 23, 2019, in Austin, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 22, 2019, upon admission of Complainants' Exhibit 10. The Complainants, represented themselves. Rafael Maridueno, dealer technical specialist, represented the Respondent.
 8. The vehicle's odometer displayed 29,032 miles at the time of the hearing.
 9. The vehicle's warranty was in effect at the time of the hearing.
 10. The vehicle's brakes squealed in the parking lot of the hearing location when arriving at the hearing.
 11. The test drive at the hearing began approximately forty minutes after the hearing convened. The vehicle was test driven on local roads (controlled by traffic lights and stop signs), service roads, and a freeway. During the beginning of the test drive (on local roads), the vehicle's brakes squealed noticeably when stopping the first five times. The noise became less noticeable after hard stops when slowing down on the highway off ramps. Thereafter, the brake noise diminished and could not be heard. The vehicle appeared to operate normally, aside from the brake noise.
 12. Some brake is normal. The Respondent's service bulletin (BR00-004g, NTB00-033g, March 19, 2018, Brake Noise/Judder/Pedal Feel Diagnosis and Repair) indicates that normal brake noise when cold usually occurs during the first few stops in the morning.
 13. The complained of noise occurs multiple times throughout the day. The noise may occur about 10 times a day.

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 Complainants 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 Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
 6. The Complainants' vehicle does not qualify for replacement or repurchase. The Complainants did not prove that the vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a).
 7. The Complainants 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 Complainants' 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 Complainants' vehicle qualifies for warranty repair. The Complainants proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainants or an agent of the Complainants 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.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' 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 excessively frequent brake squeal to the applicable warranty as specified here. Upon this Order becoming final under Texas Government Code § 2001.144:³³ (1) the Complainants 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 Complainants' refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainants 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


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

³³ 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.