

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 19-0009554 CAF**

**JAMES R. STUBBLEFIELD,  
Complainant**

v.

**FORD MOTOR COMPANY,  
Respondent**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

James R. Stubblefield (Complainant) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2017 Ford F-150 SuperCrew pickup truck. Complainant asserts that the vehicle has a defect which causes the oil pan to leak oil despite several repairs to it. Ford Motor Company (Respondent) argued that Complainant's vehicle has been repaired and, as such, Complainant is not entitled to repurchase or replacement relief. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant is eligible for replacement 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 originally convened on January 9, 2020, in Kerrville, Texas. The hearing was conducted before Hearings Examiner Edward Sandoval. Complainant, James R. Stubblefield, represented himself in the hearing. His son, Robert Stubblefield, was also present to offer testimony. Respondent, Ford Motor Company, was represented by Shirley Calderon-Pagan, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, technical expert, was also present to provide testimony for Respondent. The hearing was continued to allow a Texas Department of Motor Vehicles (Department) case advisor to inspect the subject vehicle to ascertain whether the underlying issue was still present.

A continuance in the hearing was conducted telephonically on March 2, 2020, before Hearings Examiner Edward Sandoval. Complainant, James R. Stubblefield, represented himself in the continuance. His son, Robert Stubblefield, was also present to offer testimony. Respondent, Ford Motor Company, was represented by Shirley Calderon-Pagan, Consumer Affairs Legal Analyst. The hearing record closed on March 2, 2020.

**II. DISCUSSION**

**A. Applicable Law**

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

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

In addition to these conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>5</sup>

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times and: (1) at least one repair attempt was made during the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) at least one other attempt was made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.<sup>6</sup>

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

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

Complainant purchased a new 2017 Ford F-150 SuperCrew pickup truck (the vehicle) from Ken Stoepel Ford (Stoepel) in Kerrville, Texas on April 18, 2017.<sup>8</sup> The vehicle’s mileage was 25 at the time of the purchase.<sup>9</sup> Respondent provided a bumper-to-bumper warranty for the vehicle which

---

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

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

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

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

<sup>5</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a) (3) provides a third method for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. This section requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

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

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

<sup>8</sup> Complainant Ex. 1, Motor Vehicle Retail Sale Installment Contract dated April 18, 2017.

<sup>9</sup> Complainant Ex. 3, Odometer Disclosure Statement dated April 18, 2017.

provides coverage for three (3) years or 36,000 miles, whichever comes first. At the time of the first hearing, the vehicle's mileage was 32,441. Respondent's warranty for the vehicle was still in effect on the date of the original hearing.

Complainant testified that he was not aware of an issue with the vehicle until he took it to Stoepel on December 4, 2017, for scheduled maintenance. The service technician, in addition to performing an oil change on the vehicle, replaced the vehicle's oil pan because of an oil leak from the oil pan.<sup>10</sup> At the time, Complainant was not aware that the vehicle had an oil leak. Complainant stated that he was informed by Stoepel's representative that the oil pan had been leaking oil and that the vehicle was okay after the oil pan was replaced. The vehicle's mileage on this occasion was 7,337.<sup>11</sup> Complainant testified that the vehicle was in Stoepel's possession for one (1) day. Complainant stated that he received a loaner vehicle while the vehicle was being repaired.

Complainant continued to drive the vehicle when he received it back from Stoepel. He did not notice any oil leaks after getting the vehicle back. Complainant took the vehicle to Stoepel on July 2, 2018, for scheduled maintenance. The service technician again observed an oil leak from the vehicle's oil pan area and replaced the vehicle's oil pan assembly.<sup>12</sup> The vehicle's mileage on this occasion was 14,550.<sup>13</sup> The vehicle was in Stoepel's possession for one (1) day. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant took the vehicle to Stoepel for scheduled maintenance on April 25, 2019. Stoepel's service technician found that the oil pan was leaking oil and determined that the oil pan was warped.<sup>14</sup> The technician replaced the vehicle's oil pan in order to resolve the issue.<sup>15</sup> The vehicle's mileage on this occasion was 24,047.<sup>16</sup> The vehicle was in Stoepel's possession for five (5) days on this occasion. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant testified that he had not observed oil leaking from the vehicle, but that he was concerned about the issue. It seemed unusual to him that the oil pan had to be replaced three (3) times during the first 24,000 miles that he drove it.

---

<sup>10</sup> Complainant Ex. 4, Repair Order dated December 4, 2017.

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

<sup>12</sup> Complainant Ex. 5, Repair Order dated July 2, 2018.

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

<sup>14</sup> Complainant Ex. 6, Repair Order dated April 25, 2019.

<sup>15</sup> *Id.*

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

Complainant mailed a letter on May 9, 2019, to Respondent informing them that he was dissatisfied with the vehicle.<sup>17</sup> Complainant also filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) May 9, 2019.<sup>18</sup>

Complainant initially testified that Respondent did not contact him to request a vehicle inspection regarding the oil leak issue. However, Complainant also indicated that there was an inspection of the vehicle after the April 25, 2019 repair and that Respondent's representative found no sign of an oil leak.

On October 1, 2019, Complainant took the vehicle to Stoepel for scheduled maintenance. During the repair visit, Stoepel's service advisor observed that the oil pan had signs of oil leakage and took photos of the leak.<sup>19</sup> Complainant refused to allow a repair to the vehicle for the issue, as he was in the complaint process. The vehicle's mileage on this occasion was 29,247.<sup>20</sup> The vehicle was at Stoepel's location for an hour. Complainant did not need a loaner and did not request one.

Complainant stated that he has not done anything to damage the vehicle or to cause the oil leak. As far as he knows, there's been no damage to the oil pan. Complainant feels that the engine block may be defective. He does not feel comfortable driving the vehicle long distances, as he doesn't know if the oil leak will get bad and damage the engine.

Complainant also stated that he feels that the vehicle's value has been affected. He stated that the repairs will be listed on any Carfax report and if he wants to trade the vehicle in, he won't get full value for it. Complainant also stated that the problem may constitute a fire hazard, particularly during the summer when the grass is dry.

Complainant also testified that he was informed by one of Stoepel's employees that the oil leak was within Respondent's tolerance and that it was not leaking badly enough to do anything about it.

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

### **1. Shirley Calderon-Pagan's Testimony**

Shirley Calderon-Pagan, Consumer Affairs Legal Analyst, testified for Respondent. She stated that the Respondent's authorized dealer performed three (3) repairs to the vehicle for the oil leak in the vehicle's oil pan area during the first two (2) years or 24,000 miles that Complainant owned the vehicle. The repairs were performed on December 14, 2017, at 7,337 miles; July 2, 2018, at 14,550 miles; and January 17, 2019, at 20,266 miles. Since the vehicle has not been repaired four (4) times

---

<sup>17</sup> Complainant Ex. 8, Written Notification to Manufacturer dated May 8, 2019. The letter is dated May 8, 2019, but was not mailed until May 9, 2019, as evidenced by the USPS receipt.

<sup>18</sup> Complainant Ex. 7, Lemon Law Complaint dated May 9, 2019.

<sup>19</sup> Complainant Ex. 9, Repair Order dated October 1, 2019.

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

within the first two (2) years or 24,000 miles (with only one [1] repair attempt being performed prior to the vehicle being driven 12,000 miles) of ownership, Ms. Calderon-Pagan feels that Complainant has not met the presumption that Respondent was provided with a reasonable number of attempts to repair the vehicle.

In addition, Ms. Calderon-Pagan stated that the issue does not constitute a serious safety hazard as the oil leak is not life threatening or substantially impede Complainant's ability to control or operate the vehicle and that it does not create a substantial risk of fire or explosion.

Ms. Calderon-Pagan also testified that Respondent requested and was provided a final opportunity to inspect and repair the vehicle. The inspection took place on June 5, 2019, at Stoepel. Respondent's field service Engineer, Robert Saffle, inspected the vehicle and did not find an oil leak in the oil pan area<sup>21</sup>. He noted on his report that the dealership repaired an oil leak on April 25, 2019.<sup>22</sup> No repair was performed to the vehicle at the time of the inspection.<sup>23</sup> The vehicle's mileage was 25,145.6 on this occasion.<sup>24</sup>

## 2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, technical expert and automotive consultant, testified for Respondent. Mr. Bashir has worked in the automotive industry since 1999. He initially worked as an independent technician before being hired by Respondent in 2007. Mr. Bashir was hired for his present position in 2009. He is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Bashir testified that he has never seen the vehicle. He stated that it was not typical for a new vehicle to have an oil leak repaired as many times as Complainant has. Mr. Bashir stated that whenever a vehicle's oil pan is removed, it has to be replaced which is what happened with Complainant's vehicle. Mr. Bashir was not aware of an oil pan warping issue in Respondent's F-150 vehicles. However, he did say that Respondent was aware of the possibility of oil leaks occurring in Ford F-150's built prior to February 26, 2018, which includes Complainant's vehicle. Mr. Bashir stated that in most situations, the oil leak can be resolved with one repair. The oil leak is not supposed to be an ongoing issue.

Mr. Bashir also stated that he does not feel that the oil leak constitutes much of a chance for fire in the vehicle.

---

<sup>21</sup> Respondent Ex. 2, FSE Vehicle Inspection Report dated June 5, 2019.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

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

#### **D. Commission Vehicle Inspection**

The hearings examiner, after taking testimony from the parties on January 9, 2020, ordered an inspection of the vehicle by the Department's case advisor. The inspection was performed on February 6, 2020, at Stoepel's location in Kerrville, Texas by John Dufour, Case Advisor.<sup>25</sup> Mr. Dufour performed a visual inspection of the vehicle's exterior and undercarriage at the time of the inspection.<sup>26</sup> Mr. Dufour discovered an engine oil leak originating from the engine oil pan rail area when he performed the inspection and determined that the leak was caused by "a defective oil pan, oil pan to engine block seal, or both."<sup>27</sup> No repair to the vehicle was performed at the time.

#### **E. Analysis**

Under the Lemon Law, Complainant bears 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, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to address is whether Complainant's vehicle has a defect or condition that substantially impairs its use or market value or which creates a serious safety hazard. The totality of the evidence presented at the hearing reveals that the vehicle has an oil leak in or near the oil pan area which has not been repaired. It is apparent from the testimony presented that the vehicle does have a defect or nonconformity which affects its use and market value, as a potential buyer would be more hesitant to purchase a vehicle that leaks oil and which has to be repaired periodically. In addition, the issue creates a serious safety hazard as the leak creates a substantial risk of fire in the vehicle. An oil leak in any vehicle has the potential to be a fire hazard, as a spark could ignite the accumulated oil in certain situations. As such, the hearings examiner must hold that the vehicle does have defect or condition that substantially affects its use or market value and which creates a serious safety hazard.

Complainant 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. Complainant presented the vehicle for repair to Respondent's authorized representatives on three occasions prior to filing the Lemon Law complaint, these dates were: December 4, 2017; July 2, 2018; and April 25, 2019. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty

---

<sup>25</sup> Department Ex. 1, Texas Department Of Motor Vehicles Enforcement Division – Vehicle Inspection Report dated February 24, 2020.

<sup>26</sup> *Id.*

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

“after a reasonable number of attempts.” Section 2301.605(a)(2) specifies that there is a rebuttable presumption that a reasonable number of attempts to repair have been made to repair a serious safety hazard if “at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.” The evidence presented at the hearing establishes that Complainant has met the requirements of this test since he took the vehicle for repair the requisite number of times within the specified time frame. As such, Complainant has 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 Complainant also provided Respondent with written notice of the defect on May 9, 2019 and that Respondent had a final opportunity to cure the defect. Respondent’s representative inspected the vehicle on June 5, 2019 and determined that there was no oil leak. However, the Department’s case advisor conducted an inspection of the vehicle on February 24, 2020, and found an oil leak in the vehicle’s oil pan area.

Although Respondent has been provided several opportunities 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, Complainant has met his burden of proof to establish that the vehicle has a warrantable and existing defect or condition which creates a serious safety hazard and which substantially impairs the vehicle’s use and market value.

Based on the evidence and the arguments presented, the hearings examiner finds that replacement of the vehicle is the appropriate remedy in this case. Complainant’s request for replacement relief is hereby granted.

### **III. FINDINGS OF FACT**

1. James R. Stubblefield (Complainant) purchased a new 2017 Ford F-150 SuperCrew pickup truck on April 18, 2017, from Ken Stoepel Ford (Stoepel) in Kerrville, Texas with mileage of 25 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle providing coverage for three (3) years or 36,000 miles, whichever comes first.
3. The vehicle’s mileage on the date of the first hearing was 32,441.

4. At the time of hearing the bumper-to-bumper warranty for the vehicle was still in effect.
5. Complainant has experienced several incidents with the vehicle's oil pan leaking oil.
6. Complainant's vehicle was serviced by Respondent's authorized dealer, Stoepel, on the following dates because of Complainant's concerns with the vehicle's oil pan leaking oil:
  - a. December 4, 2017, at 7,337 miles;
  - b. July 2, 2018, at 14,550 miles; and
  - c. April 25, 2019, at 24,047 miles.
7. On December 4, 2017, Stoepel's service technician replaced the vehicle's oil pan and changed the vehicle's oil and filter in order to resolve the oil leak issue.
8. On July 2, 2018, Stoepel's service technician replaced the vehicle's oil pan assembly to resolve the oil leak issue.
9. On April 25, 2019, Stoepel's service technician determined that the vehicle's oil pan was warped and replaced the vehicle's oil pan assembly in order to resolve the issue.
10. On May 9, 2019, Complainant provided written notice to Respondent of Complainant's dissatisfaction with the vehicle.
11. On May 9, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On June 5, 2019, Respondent's field service engineer, Robert Saffle, inspected the vehicle pursuant to Respondent's request to perform a final repair on it.
13. During the inspection described in Findings of Fact #12, Mr. Saffle did not find an oil leak from the area around the vehicle's oil pan.
14. On February 24, 2020, the Department's case advisor, John Dufour, inspected the vehicle at Ken Stoepel Ford. The vehicle's mileage at the time was 33,611.
15. During the inspection described in Findings of Fact #14, Mr. Dufour observed an oil leak from the vehicle's oil pan area.
16. On August 29, 2019, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant 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.



17. The hearing in this case originally convened on January 9, 2020, in Kerrville, Texas. The hearing was conducted before Hearings Examiner Edward Sandoval. Complainant, James R. Stubblefield, represented himself in the hearing. His son, Robert Stubblefield, was also present to offer testimony. Respondent, Ford Motor Company, was represented by Shirley Calderon-Pagan, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, technical expert, was also present to provide testimony for Respondent. A continuance in the hearing was conducted telephonically on March 2, 2020, before Hearings Examiner Edward Sandoval. Complainant, James R. Stubblefield, represented himself in the continuance. His son, Robert Stubblefield, was also present to offer testimony. Respondent, Ford Motor Company, was represented by Shirley Calderon-Pagan, Consumer Affairs Legal Analyst. The hearing record closed on March 2, 2020.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant 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. Complainant bears the burden of proof in this matter.
6. Complainant's vehicle has an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
8. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.

9. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief and replacement of his 2017 Ford F-150 SuperCrew pickup truck under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

1. Respondent shall, in accordance with Texas Administrative Code § 215.208(d)(1)(A), promptly authorize the exchange of Complainant's new 2017 Ford F-150 SuperCrew pickup truck (the reacquired vehicle) with Complainant's choice of any comparable motor vehicle.
2. Respondent shall instruct the dealer to contract the sale of the selected comparable vehicle with Complainant under the following terms:
  - (a) The sales price of the comparable vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);
  - (b) The trade-in value of Complainant's 2017 Ford F-150 SuperCrew pickup truck shall be the MSRP at the time of the original transaction, less a reasonable allowance for Complainant's use of the vehicle;
  - (c) The use allowance for replacement relief shall be calculated in accordance with the formula outlined in Texas Administrative Code § 215.208(b)(2) (the use allowance is \$7,090.22);
  - (d) The use allowance paid by Complainant to Respondent shall be reduced by \$35.00 (the refund for the filing fee) (after deducting the filing fee, the use allowance is reduced to **\$7,055.22**);
3. Respondent's communications with Complainant finalizing replacement of the reacquired vehicle shall be reduced to writing, and a copy thereof shall be provided to the Department within twenty (20) days of completion of the replacement.
4. Respondent shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department.<sup>28</sup>
5. Respondent shall affix the disclosure label to the reacquired vehicle in a conspicuous location (*e.g.*, hanging from the rear view mirror). Upon Respondent's first retail sale of

---

<sup>28</sup> Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.

- the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.
  7. Respondent shall repair the defect or condition that was the basis of the 2017 Ford F-150 SuperCrew pickup truck's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.
  8. Upon replacement of Complainant's 2017 Ford F-150 SuperCrew pickup truck, Complainant shall be responsible for payment or financing of the usage allowance of the reacquired vehicle, any outstanding liens on the reacquired vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees. Further, in accordance with 43 Tex. Administrative Code § 215.208(d)(2):
    - (a) If the comparable vehicle has a higher MSRP than the reacquired vehicle, Complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs to the manufacturer, converter or distributor; and
    - (b) If the comparable vehicle has a lower MSRP than the reacquired vehicle, Complainant will be credited the difference in the MSRP between the two vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the reacquired vehicle.
  9. Complainant shall be responsible for obtaining financing, if necessary, to complete the transaction.
  10. The replacement transaction described in this Order shall be completed within 20 calendar days from the receipt of this Order. If the transaction cannot be accomplished within the ordered time period, Respondent shall repurchase Complainant's 2017 Ford F-150 SuperCrew pickup truck pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be **\$35,777.34**. The refund shall be paid to Complainant and the lien holder, if any, as their interests appear. If clear title is delivered, the full refund shall be paid to Complainant.

Purchase price, including tax, title, license and registration	\$42,832.56
Delivery mileage	25
Mileage at first report of defective condition	7,337
Mileage on hearing date	32,441
Useful life determination	120,000

Purchase price, including tax, title, license and registration						\$42,832.56	
Mileage at first report of defective condition						7,337	
Less mileage at delivery						<u>-25</u>	
Unimpaired miles						7,312	
Mileage on hearing date						32,441	
Less mileage at first report of defective condition						<u>-7,337</u>	
Impaired miles						25,104	
Reasonable Allowance for Use Calculations:							
Unimpaired miles							
	<u>7,312</u>						
	120,000	X	\$42,832.56	=		\$2,609.93	
Impaired miles							
	<u>25,104</u>						
	120,000	X	\$42,832.56	X .5	=	<u>\$4,480.29</u>	
Total reasonable allowance for use deduction:							\$7,090.22
Purchase price, including tax, title, license and registration						\$42,832.56	
Less reasonable allowance for use deduction						-\$7,090.22	
Plus filing fee refund						<u>\$35.00</u>	
<b>TOTAL REPURCHASE AMOUNT</b>						\$35,777.34	

11. If Complainant's 2017 Ford F-150 SuperCrew pickup truck is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of Respondent's reacquisition of the vehicle, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the trade-in value of Complainant's vehicle.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect (the oil pan leak) in the reacquired vehicle identified in this Decision.

**SIGNED March 26, 2020**



---

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