

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0014439 CAF**

**REGINA JOHNSON,
Complainant**

v.

**JAGUAR LAND ROVER NORTH
AMERICA, LLC,
Respondent**

§
§
§
§
§
§
§

**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Regina Johnson (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in her vehicle distributed by Jaguar Land Rover North America, 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 January 27, 2020, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on February 11, 2020. The Complainant, represented herself. John Chambless, attorney, represented the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must currently exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life-threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹¹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹²

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner 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

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

¹² *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1). 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.

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

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle” and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect before the warranty's expiration.¹⁶ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁷

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainant cannot prevail where the existence of any required fact appears equally likely or unlikely.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint must state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁹ *E.g.*, *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

²⁰ “In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days.” TEX. GOV'T CODE §§ 2001.051; “Notice of a hearing in a contested case must include . . . a short, plain statement of the factual matters asserted.” TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to 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 27, 2018, the Complainant, purchased a new 2017 Jaguar XE from Sonic Houston LR, L.P. d/b/a Jaguar Houston Central, Land Rover Houston Central, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 10,382 miles on the odometer at the time of purchase. The vehicle’s original limited warranty provides bumper to bumper coverage for five years or 60,000 miles from the in-service date (August 1, 2016), whichever occurs first. In addition, the vehicle has a “certified pre-owned” limited warranty for six years or 100,000 miles, from the

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

²² 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²³ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁴ TEX. OCC. CODE § 2301.604.

²⁵ 43 TEX. ADMIN. CODE § 215.209(a).

²⁶ 43 TEX. ADMIN. CODE § 215.208(b)(1).

in-service date, whichever occurs first.²⁷ On August 10, 2019, the Complainant provided a written notice of defect to the Respondent. On August 11, 2019, the Complainant filed a complaint with the Department alleging that the vehicle would jerk when shifting into drive and lightly pressing the accelerator; the passenger mirror would intermittently stay in the downward position; the navigation system would not work properly; music skips streamed when from her phone through Bluetooth. On September 16, 2019, the Complainant amended the complaint to include: brake noise; and the vehicle not idling forward in drive. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

| Date | Miles | Issue |
|------------------------------------|--------|---|
| April 12, 2018 | 18,352 | Brake noise, vehicle stops when taking foot off the gas, jerks when accelerating, navigation does not work, <i>mirror</i> |
| April 30, 2018 | 19,177 | Brake noise |
| May 9, 2018 | 19,788 | Audio goes in and out |
| May 26, 2018 | 20,355 | Brake noise |
| August 27, 2018 August 29, 2018 | 24,466 | Sound cuts in and out streaming music, passenger mirror goes down and not up, jerks on acceleration, brake squeak |
| December 6, 2018 | 31,564 | Audio goes in and out when streaming, passenger side mirror will be in down position |
| January 19, 2019 | 32,165 | Mirror will not go back up |
| August 13, 2019 | 46,008 | Mirror will reset intermittently, brakes squeak, jerks before acceleration, infotainment system freezing/slow |
| August 30, 2019 | 47,057 | Brakes squeaking, mirror collapses, jerks when taking off |

1. Jerking

The Complainant testified that when leaving home and turning a corner, the vehicle would jerk when pressing the accelerator but would operate smoothly after that. The jerking would randomly occur when taking off, about once a week or once in two weeks. The jerking last occurred three days before the hearing. She affirmed that the jerking would occur with the vehicle cold.

2. Passenger-Side Mirror

The Complainant testified that the passenger-side mirror would intermittently drop (point down). While backing out of the garage, the mirror might not come back up. She first noticed the issue when backing into her driveway. After sitting overnight, she noticed the mirror still pointing

²⁷ Complainant's Ex. 2, New Vehicle Limited Warranty Disclosure; Complainant's Ex. 3, Direct Dealer Warranty – Vehicle Details.

down in the morning. Sometimes while driving, the mirror would fall back down so that she would have to reposition the mirror. The mirror issue would occur about four times a month. She last noticed this issue about a week and a half before the hearing.

3. Navigation System

Regarding the navigation system, the Complainant explained that she would put an address in and the screen would go blank. Sometimes the navigation will direct her to the wrong place. Additionally, the InControl features would not work all the time. In particular, the voice controls would not work. The Complainant did not use the navigation often because of the issues, which would occur about once every two months. She last noticed such problems about a month and a half before the hearing. Also, the navigation system would display the wrong speed limit. The voice controls last malfunctioned the day before the hearing.

4. Bluetooth Streaming

The Complainant stated that when playing music from her phone through Bluetooth, the music would go “in and out” so she would only hear every other word. She elaborated that the problem would occur every time she connected her phone with Bluetooth. She last noticed this issue about four months before the hearing.

5. Brake Noise

The Complainant described the brake noise as a whistling/squealing noise when slowing down and a rubbing noise when close to a stop. She first noticed the noise about the first service visit on April 12, 2018. She would hear the noise for a week and then noise would stop. The noise occurred intermittently. She affirmed that the noise would occur every time when slowing to a stop. She last noticed the noise on the way to the hearing.

6. Idling Forward

Regarding the vehicle not idling forward, the Complainant explained that the vehicle would not move forward with the vehicle in drive and the foot off the brake, with no brake indicator on. She noted that the loaner vehicles did not do this. She clarified that this issue would occur about once a week. She last noticed this issue about three weeks before the hearing.

On cross-examination, the Complainant acknowledged that the vehicle had an accident with a pot hole in October 2018, damaging a rear wheel. She affirmed that a dealer replaced the

replaced back rotors, sensors, and brake pads under warranty. The dealer also recommended replacing the front brake pads and sensors but the Complainant declined because the cost would have been paid out-of-pocket.

Upon clarification questions, the Complainant affirmed that she inquired about the mirror issue at the April 12, 2018, service visit, though not documented on the repair order.

The Complainant further testified that the vehicle had an extended warranty in addition to the original warranty. Before purchasing the vehicle, the Complainant requested a CARFAX. She also asked about body and water damage, which the dealer did not acknowledge. She purchased the vehicle because the CARFAX showed no concerns. The subject vehicle was previously used as a loaner vehicle. 38 days after purchase, the Complainant began experiencing multiple issues. She contacted the dealer but could not get the vehicle in for service because of a shortage of loaner cars. Her initial concerns were brake noise, the passenger mirror pointing down, jerking, and not moving in drive. The Complainant requested the vehicle's history from the dealer, which included field service actions for water ingress and trunk lid collision damage. Also, the windshield was replaced; the wheel rim was refurbished/refinished; the sunroof had issues; the car had mold; and the carpet, passenger seat and a kick panel were replaced. Because the vehicle was used as a loaner vehicle, the Complainant asserted that the salesperson must have known the history of subject vehicle.

Upon clarification questions, the Complainant confirmed that she received a loaner vehicle every time she left her vehicle at the dealer. She also affirmed that the vehicle had water damage before purchasing it and indicated that the vehicle had an accident requiring replacement of the windshield and repair of a wheel rim.

C. Inspection

Upon inspection at the hearing, before the test drive, the vehicle's odometer displayed 50,629 miles. During the test drive, the vehicle idled forward normally. The hearings examiner paired an iPhone 7 with the vehicle's Bluetooth and streamed an Internet broadcast. The Complainant noted that she would notice the lapses in music when using the Pandora application. The hearings examiner also paired an Android phone with the vehicle and played music through

an application. The test drive ended with 50,644 miles on the odometer, for a total of 15 miles driven. The vehicle appeared to perform normally.

D. Summary of Respondent's Evidence and Arguments

Brandon Sangster, customer satisfaction senior technical specialist, testified that in October 2019, he visually inspected the subject vehicle, reviewed the concerns in the repair history, and test drove the vehicle. He successfully paired two phones, an iPhone 6 and iPhone 10, with the vehicle. He tested the voice commands and listened for brake squeal and creaking while turning. He emphasized observing the shifting from a stop to accelerating up to speed and downshifting to pass. He tested the mirrors by shifting into reverse to see if the mirrors dipped and then shifting to park to see if the mirrors would return and shifting from reverse to drive to see if the mirrors would return. He did not find any faults and could not verify any of the concerns. While test driving, he observed whether the mirrors would spontaneously dip. Mr. Sangster did not experience any of the issues and could not verify any concerns. Further, affirmed that his review of the repair orders showed that the issues either could not be duplicated or were successfully repaired. With respect to the test drive at the hearing, he did not hear any abnormal noise and the Bluetooth functioned. He also did not feel any abnormal surging, accelerating, or jerking.

E. Analysis

1. Warranty Coverage

To qualify for any relief, the vehicle must have a defect covered by warranty (warrantable defect).²⁸ Lemon Law relief does not apply to all issues that may occur with a vehicle but only to warrantable defects.²⁹ 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. The warranty generally provides that:

Jaguar warrants that during the warranty period, if a 2017 Model Year Jaguar vehicle is properly operated and maintained, repairs required to correct defects in factory-supplied materials or factory workmanship will be performed without charge upon presentment for service at an authorized Jaguar retailer; any

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

²⁹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

component covered by this warranty found to be defective in materials or workmanship will be repaired, or replaced, without charge, with a new or remanufactured part distributed by Jaguar, at its sole option. In addition, Jaguar warrants that an authorized Jaguar retailer will provide service adjustments and will replace defective ‘wear parts’ on your vehicle within the service adjustment warranty period.³⁰

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³¹ 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 misrepresentations and accidental damage (which occur after manufacturing), are not warrantable defects. Design characteristics result from the vehicle’s specified design and not from any error during manufacturing.³² Because the warranty only covers manufacturing defects, any non-manufacturing problems do not qualify for relief. Additionally, the warranty expressly excludes or limits certain items, including:

tires and items such as:

- Lubricants
- Normal maintenance items
- Regularly scheduled maintenance, parts and labor
- Wear parts, except as listed below

....

Wear parts are warranted for one (1) year or until the vehicle has been driven 12,500 miles, whichever occurs first. Wear parts include the following:

- Brake pads – defect only *
- Windshield wiper blades

³⁰ Complainant’s Ex. 7, Passport to Service.

³¹ 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.”).

³² 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).

* Brake pads are covered for defects in material and workmanship only. Normal wear is not covered by the New Vehicle Limited Warranty.

....

• Damage caused by collision, fire, flood, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle

....

• Normal noises or vibration. Your vehicle is a mechanical device, and all mechanical devices make some sort of noise and/or vibration. These noises and vibrations can differ from vehicle to vehicle, and Jaguar recognizes those noises as normal and characteristic of the product. Normal noise and/or vibration, as well as deterioration caused by normal wear and tear, each as determined by Jaguar or its representative, are not covered by our New Vehicle Limited Warranty.³³

As explained in the discussion of applicable law, the Complainant has the burden of proving every required fact by a preponderance of the evidence. Accordingly, the Complainant must affirmatively prove that the warranty covers the alleged defect or nonconformity.

2. Alleged Defects

a. Jerking

The vehicle did not have a reasonable number of repair attempts for the jerking issue to qualify for repurchase or replacement. As outlined in the discussion of applicable law, a vehicle generally must have four repair attempts for the same issue within the earlier of 24 months or 24,000 miles from delivery to establish a rebuttable presumption of reasonable repairs.³⁴ In the present case, delivery occurred on January 27, 2018, at 10,382 miles, so the four repair attempts must have occurred by 34,382 miles. However, the repair history only shows two repair attempts within that span. Alternatively, the vehicle must have been out of service for repair for at least 30 days within the earlier of 24 months or 24,000 miles from delivery. However, the record shows that the dealer provided a loaner vehicle for all repair visits, so that none of the days out of service count towards the 30 days. And finally, the facts in this case do not warrant otherwise finding a reasonable number of repair attempts based on different circumstances and fewer attempts. Nevertheless, the Complainant last noticed the vehicle jerking three days before the hearing,

³³ Complainant's Ex. 7, Passport to Service.

³⁴ The jerking issue does not fit the Lemon Law's definition of serious safety hazard. Therefore, the rebuttable presumption for serious safety hazards does not apply.

January 24, 2020, after the last repair attempt for the issue on August 13, 2019, indicating that the issue continues to exist. Therefore, the jerking issue qualifies for repair relief.

b. Passenger-Side Mirror

The Complainant last noticed the passenger mirror malfunction about one and a half weeks before the hearing (the week of January 12, 2020), after the last repair visit for the mirror issue on August 13, 2019. Additionally, the mirror issue has had four repair attempts within 24 months or 24,000 miles after delivery. However, the malfunctioning mirror does not substantially impair the use or value of the vehicle. The evidence shows that the issue only occurs a few times a month and the mirror can be repositioned if facing downward. Further, under the reasonable prospective purchaser standard, the mirror malfunction does not substantially impair the vehicle's value. Nonetheless, the evidence reflects that the issue continued to exist after the

c. Navigation System

The vehicle did not have a reasonable number of repair attempts for the navigation issue to qualify for repurchase or replacement. The applicable rebuttable presumption requires at least four repair attempts in the first 24 months or 24,000 miles. However, the navigation system only had one such repair attempt. Nevertheless, the record shows that the navigation system malfunctioned the day before the hearing, after the last repair attempt on August 13, 2019, indicating that the issue continues to exist. Consequently, the navigation issue qualifies for repair relief.

d. Bluetooth Streaming

The Complainant testified that the music skipping would occur every time she connected her phone with Bluetooth. However, during the test drive at the hearing, the hearings examiner connected an iPhone 7 and an Android phone with the subject vehicle's Bluetooth and successfully streamed audio from both devices using different applications. Further, Mr. Sangster, during his inspection, successfully paired an iPhone 6 and iPhone 10. Significantly, the Complainant pointed out that she experienced the music interruptions when using the Pandora application. These facts indicate that the music skipping relates to an issue specific to the Complainant's phone, such as the hardware, operating system, applications, or carrier's network, and not an issue with the vehicle's Bluetooth feature. Accordingly, this issue does not support any relief.

e. Brake Noise

As outlined in the discussion of warranty coverage, wear parts, such as brake pads, are only covered for the one year or 12,500 miles. The New Vehicle Limited Warranty Disclosure specifies that “coverage under the manufacturer’s warranty begins on the in-service date, not the date of your purchase.”³⁵ In this case, the in-service date is August 1, 2016, so the brake pad warranty expired on August 1, 2017, before the Complainant purchased the vehicle on January 27, 2018. Additionally, the warranty terms specifically exclude the brake noise in this case. Because the warranty does not cover brake noise, it cannot support any relief.

f. Idling Forward

The vehicle did not have a reasonable number of repair attempts for the idling forward issue to qualify for repurchase or replacement. The applicable rebuttable presumption requires at least four repair attempts in the first 24 months or 24,000 miles. This issue only had one such repair attempt. However, the evidence reflects that this issue continues to exist and qualifies for repair relief. The Complainant experienced this issue three weeks before the hearing while the last repair for this condition occurred on April 12, 2018.

III. Findings of Fact

1. On January 27, 2018, the Complainant, purchased a new 2017 Jaguar XE from Sonic Houston LR, L.P. d/b/a Jaguar Houston Central, Land Rover Houston Central, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 10,382 miles on the odometer at the time of purchase.
2. The vehicle’s original limited warranty provides bumper to bumper coverage for five years or 60,000 miles from the in-service date (August 1, 2016), whichever occurs first. However, the warranty covers wear parts for one year or 12,500 miles, whichever occurs first. In addition, the vehicle has a “certified pre-owned” limited warranty for six years or 100,000 miles, from the in-service date, whichever occurs first.

³⁵ Complainant’s Ex. 2, New Vehicle Limited Warranty Disclosure.

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

| Date | Miles | Issue |
|------------------------------------|--------|---|
| April 12, 2018 | 18,352 | Brake noise, vehicle stops when taking foot off the gas, jerks when accelerating, navigation does not work, <i>mirror</i> |
| April 30, 2018 | 19,177 | Brake noise |
| May 9, 2018 | 19,788 | Audio goes in and out |
| May 26, 2018 | 20,355 | Brake noise |
| August 27, 2018 August 29, 2018 | 24,466 | Sound cuts in and out streaming music, passenger mirror goes down and not up, jerks on acceleration, brake squeak |
| December 6, 2018 | 31,564 | Audio goes in and out when streaming, passenger side mirror will be in down position |
| January 19, 2019 | 32,165 | Mirror will not go back up |
| August 13, 2019 | 46,008 | Mirror will reset intermittently, brakes squeak, jerks before acceleration, infotainment system freezing/slow |
| August 30, 2019 | 47,057 | Brakes squeaking, mirror collapses, jerks when taking off |

4. On August 10, 2019, the Complainant provided a written notice of defect to the Respondent.
5. On August 11, 2019, the Complainant filed a complaint with the Department alleging that the vehicle would jerk when shifting into drive and lightly pressing the accelerator; the passenger mirror would intermittently stay in the downward position; the navigation system would not work properly; music skips streamed when from her phone through Bluetooth. On September 16, 2019, the Complainant amended the complaint to include: brake noise, and the vehicle not idling forward in drive.
6. On September 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.
7. The hearing in this case convened on January 27, 2020, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on February 11, 2020. The Complainant, represented herself. John Chambless, attorney, represented the Respondent.

8. The vehicle's warranty was in effect at the time of the hearing, except that coverage of wear parts had expired on August 1, 2017.
9. Upon inspection at the hearing, before the test drive, the vehicle's odometer displayed 50,629 miles. During the test drive, the vehicle idled forward normally. The hearings examiner paired an iPhone 7 with the vehicle's Bluetooth and streamed an Internet broadcast. The Complainant noted that she would notice the lapses in music when using the Pandora application. The hearings examiner also paired an Android phone with the vehicle and played music through an application. The test drive ended with 50,644 miles on the odometer, for a total of 15 miles driven. The vehicle appeared to perform normally.
10. The passenger-side mirror malfunction occurs intermittently, about four times a month. The mirror can be repositioned after the mirror malfunctions.
11. The passenger-side mirror malfunction will not deter prospective purchasers nor substantially negatively affect the purchase price.

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 prove that the Bluetooth streaming and brake noise issues are covered

by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a). The Complainant did not prove that the malfunctioning passenger-side mirror creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a). The issues regarding jerking, navigation malfunction, and failure to idle forward 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 defects 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.

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 jerking after shifting into drive and pressing the accelerator; the passenger-side mirror pointing downward; the navigation system malfunction; and the failure to idle forward. Upon this Order becoming final under Texas Government Code § 2001.144:³⁶ (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 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 April 15, 2020



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

³⁶ 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.