

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 20-0004329 CAF**

<b>PAULA PAYNE,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
v.	§	<b>OF</b>
	§	
<b>VOLKSWAGEN GROUP OF</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>AMERICA, INC.</b>	§	
<b>Respondent</b>	§	

**DECISION AND ORDER**

Paula Payne (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2018 Audi Q3. Complainant asserts that the vehicle is defective because the vehicle vibrates when it is driven at high speeds, the vehicle pulls to the right when it is driven, and there have been problems with the engine starting and idling high. Volkswagen Group of America (Respondent) argues that the vehicle does not have a defect and is performing as designed. The hearings examiner concludes that the vehicle has an existing warrantable defect. Therefore, Complainant is eligible for repurchase relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened telephonically on May 14, 2020, before Hearings Examiner Edward Sandoval. Paula Payne (Complainant) represented herself. Dale Green, Complainant's husband, also testified for Complainant. Respondent was represented by Susan Lucas, contract representative. The hearing record closed on May 14, 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

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

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

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 by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<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 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.<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 2018 Audi Q3 from Audi Austin North (North) in Austin, Texas, on April 24, 2018.<sup>8</sup> The vehicle’s mileage at the time of delivery was 10.<sup>9</sup> Respondent provided a new vehicle limited warranty which provides coverage for the vehicle for the first four (4) years or 50,000 miles of ownership, whichever comes first. In addition, the vehicle’s mileage on the date of hearing was 6,945.

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<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. 2, Motor Vehicle Retail Installment Sales Contract dated April 24, 2018.

<sup>9</sup> Complainant Ex. 3, Odometer Disclosure Statement dated April 24, 2018.

Complainant is the only driver of the vehicle. She testified that the vehicle vibrates when it is driven at high speeds, that the vehicle pulls to the right when it is driven, and that there have been problems with the engine starting and idling high.

Complainant stated that she test drove the vehicle at the time of purchase. She did not drive the vehicle on the highway, but on some side streets around the dealership. Complainant stated that the vehicle's ride felt somewhat bumpy during the test drive, but she did not ask about another vehicle or cancelling the purchase.

Complainant testified that as soon as she got the vehicle on the highway to drive back to her home in San Antonio, she noticed that the vehicle shook, bounced severely, and pulled to the right. She felt that the vehicle's steering was off kilter and was vibrating. During the entire drive home, the vehicle shook, bounced, and drifted across the road.

On April 27, 2018, Complainant took the vehicle to Cavender Audi (Cavender), Respondent's authorized dealer, in San Antonio, Texas, for repair for the vibration and shaking issue. Cavender's service technician felt that the vibration was caused by the tires being radially imbalanced.<sup>10</sup> The technician balanced all four (4) tires to resolve the issue.<sup>11</sup> In addition, the technician replaced the vehicle's cabin filter at Complainant's request.<sup>12</sup> The vehicle's mileage at the time of the repair visit was 118.<sup>13</sup> The vehicle was in Cavender's possession for one (1) day. Complainant was not provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that the vehicle continued to vibrate and shake while she was driving it and continued to pull to the right. In addition, the vehicle would vibrate and shake more intensely if she stepped on the vehicle's brakes. On May 10, 2018, Complainant took the vehicle to Cavender for repair due to the vibration issue. Cavender's service technician performed a four (4) wheel alignment to the vehicle to resolve the issue of the vehicle pulling to the right.<sup>14</sup> In addition, the technician balanced and radial force balanced all four (4) wheels to address the vibration issue.<sup>15</sup> The technician stated that the vibrations could be caused by "a result of the harmonic vibrations caused by the radial force variation (RFV) of the tires or an imbalance of the wheel and tire assembly."<sup>16</sup> The mileage on the vehicle at the time of this repair was 450.<sup>17</sup> The vehicle was returned to Complainant on May 15, 2018. Complainant was not provided a loaner vehicle during this repair.

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<sup>10</sup> Respondent Ex. 1, Warranty Repair History undated, p. 1.

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

<sup>12</sup> Complainant Ex. 3, Repair Order dated April 27, 2018.

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

<sup>14</sup> Complainant Ex. 4, Repair Order dated May 10, 2018.

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

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

<sup>17</sup> *Id.*

Complainant stated that after picking up the vehicle from Cavender, it still drove the same. She continued to feel the vehicle vibrate when driving it. In addition, Complainant felt that the vehicle's steering wheel was off center. Complainant took the vehicle to Cavender for repair for the issue on May 29, 2018. Cavender's service technician determined that the vehicle's alignment was off center and performed a four (4) wheel alignment to address the issue regarding the steering wheel.<sup>18</sup> The technician also determined that all four (4) tires had excessive road force and replaced the tires with new ones in order to resolve the vibration issue.<sup>19</sup> The mileage on the vehicle at the time of the repair was 598.<sup>20</sup> The vehicle was in Cavender's possession until June 20, 2018. Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant stated that she continued to drive the vehicle and continued to feel excessive vibration when driving at higher speeds. She stated that she would not drive the vehicle over 40 mph and tried to stay near her home when driving it. In addition, she did not drive the vehicle on the highway because of the vibration she would feel when driving it.

Complainant testified that the vehicle would not start on January 4, 2019. As a result, she had the vehicle towed to North Park Audi (North Park), Respondent's authorized dealer, in San Antonio, Texas. North Park's service technician performed a system scan and found a fault code that the fuel system was too lean off idle.<sup>21</sup> However, the technician was unable to find an actual issue with the vehicle after several diagnostic tests.<sup>22</sup> Several warning lights had illuminated when the vehicle refused to start, but those were reset by the technician and did not return during any test drives.<sup>23</sup> The only repair performed by the technician was a recharge of the vehicle's battery.<sup>24</sup> The vehicle's mileage on this occasion was 3,485.<sup>25</sup> The vehicle was in North Park's possession until January 11, 2019, on this occasion. Complainant was not provided a loaner vehicle during this repair visit.

Complainant stated that after the January 4, 2019, repair visit, the vehicle's idle seemed to change and seemed to be higher than it had been prior the repair visit. In addition, Complainant continued to feel the vibration when driving the vehicle at higher speeds.

Complainant took the vehicle to North Park on April 29, 2019, in order to address the high idle issue. Complainant stated that the idle was so high and loud, that she could not carry on a conversation in the vehicle. North Park's service technician did not find any stored fault codes on

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<sup>18</sup> Complainant Ex. 5, Repair Order dated May 29, 2018.

<sup>19</sup> *Id.*

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

<sup>21</sup> Complainant Ex. 6, Repair Order dated January 4, 2019.

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

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

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

<sup>25</sup> *Id.*

the vehicle's computers.<sup>26</sup> The technician compared the vehicle's drive to that of a similar model of the same year and determined that they were driving and idling similarly.<sup>27</sup> The technician did not perform any repairs to the vehicle for the high idle concern.<sup>28</sup> The mileage on the vehicle when taken to North Park for repair on this occasion was 4,684.<sup>29</sup> The vehicle was in the dealer's possession until April 30, 2019.<sup>30</sup> Complainant was not provided with a loaner vehicle while her vehicle was in the dealer's possession.

Complainant testified that the vehicle's idle was still high and it was still loud in the passenger compartment when she got the vehicle back from North Park. In addition, the vehicle was still vibrating when driving at higher speeds and pulling to the right. Complainant took the vehicle to North Park for repair on October 15, 2019. North Park's service technician determined that the vehicle's engine idle was rough at start up due to "secondary air injection for engine warm up phase."<sup>31</sup> However, the technician determined that the vehicle was operating as designed and no repair was needed for the idle issue.<sup>32</sup> Complainant also raised the issue that the vehicle's caster was out of alignment and needed to be corrected.<sup>33</sup> Complainant testified that North Park's service technician took a test drive in the vehicle with her and could feel the vehicle vibration on the steering column during the drive. She did not raise the issue that the vehicle's caster was out of alignment, that information was entered on the repair order by the service advisor. During the repair, the technician indicated that the caster was not adjustable on the vehicle and can "only be equalized left and right by means of subframe lateral movement."<sup>34</sup> No repair was performed for the issue. The vehicle's mileage at the time of repair was 6,083.<sup>35</sup> The vehicle was in North Park's possession until October 16, 2019. Complainant was not provided a loaner vehicle while her vehicle was being repaired.

Complainant continued to experience the vehicle vibrating when driving at higher speeds, the vehicle pulling to the right, and the engine's high idle. As a result, on November 18, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).<sup>36</sup> Complainant also mailed a notice letter to Respondent on November 19, 2019, advising them of Complainant's dissatisfaction with the vehicle.<sup>37</sup>

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<sup>26</sup> Complainant Ex. 7, Repair Order dated April 29, 2019.

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

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Complainant Ex. 8, Repair Order dated October 15, 2019.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Complainant Ex. 1, Lemon Law Complaint dated November 18, 2019.

<sup>37</sup> Complainant Ex. 10, Letter to Audi of America, Inc. dated November 19, 2019.

Complainant was in contact with Respondent after filing the Lemon Law complaint in an attempt to resolve her concerns. On February 24, 2020, Complainant took the vehicle to North Park for repair for the vibration and rough idle issues. North Park's service technician performed an alignment check on the vehicle and indicated that Complainant declined any work for the issue.<sup>38</sup> In addition, the technician indicated that he could not duplicate a rough idle from the engine when driving in reverse.<sup>39</sup> Complainant testified that she did not indicate that the rough idle occurred when driving in reverse. The vehicle's mileage on this occasion was 6,686.<sup>40</sup>

On March 9, 2020, Complainant took the vehicle to Audi Dominion (Dominion), Respondent's authorized dealer, in San Antonio, Texas for repair for the vehicle pulling to the right. Dominion's service technician performed a four (4) wheel alignment on the vehicle in order to resolve the issue.<sup>41</sup> However, the alignment diagram shows that even after the alignment the right front camber is still in the red.<sup>42</sup> The vehicle's mileage on this occasion was 6,731.<sup>43</sup>

Complainant testified that the vehicle is still drifting to the right when she drives it. In addition, she continues to feel the vehicle vibrating when she drives it at higher speeds. Finally, the vehicle is still idling rough and sounds like a truck. Complainant feels that the vibration is a safety issue and warrants repurchase of the vehicle.

### C. Respondent's Evidence and Arguments

Susan Lucas, contract representative, represented Respondent in the hearing. Ms. Lucas submitted Respondent's written response to the Lemon Law complaint as evidence in the hearing. Respondent's written response to the complaint included the following statement:

To our knowledge, there are not warranty concerns present and the vehicle operating [*sic*] normally. The repair history does not show an unreasonable number of repair attempts, or a substantial impairment of use, value or safety of the vehicle.<sup>44</sup>

### D. Analysis

Under Texas' 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

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<sup>38</sup> Complainant Ex. 11, Repair Order dated February 24, 2020.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Complainant Ex. 14, Repair Order dated March 9, 2020.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Respondent Ex. 1, Respondent's Evidence Packet, p. 8.

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.

### **1. Engine Not Starting Issue**

Complainant alleged that the vehicle's engine would not start on one occasion. The testimony taken at hearing indicates that on or about January 4, 2019, the vehicle would not start and had to be towed to a local dealership for repair. This was the only occasion that the vehicle would not start and repairs were performed to the vehicle to resolve the issue. Since the issue has not occurred again and seems to be repaired, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle.

### **2. Engine Idling High Issue**

Complainant alleged that the vehicle's engine has a high idle that has not been repaired. The issue first arose after a repair performed on the vehicle on January 4, 2019. Complainant raised the issue with Respondent's authorized dealer three (3) times prior to the hearing. On two (2) occasions the dealer's technicians indicated that they compared the vehicle's engine idle to similar model vehicles and that Complainant's vehicle was not idling differently from the other similar vehicles. On the third repair for the issue, the service technician inspected the wrong complaint that the rough idle occurred when driving in reverse, which was not what was stated by Complainant. Even though the rough idle issue is still occurring, the hearings examiner must hold that the issue does not provide sufficient grounds to order repurchase or replacement of the vehicle, since there were only three (3) repair attempts for the issue and not the four (4) attempts required by Occupations Code § 2301.605 to establish the presumption that Respondent had sufficient opportunity to repair the vehicle. Respondent will be ordered to repair this issue so that the vehicle conforms to the new vehicle limited warranty.

### **3. Vehicle Pulling to the Right Issue**

Complainant alleged that the vehicle pulls to the right when she is driving it and that the issue first occurred on the date of purchase, April 24, 2018. Complainant has raised the issue for repair at least three times (May 10, 2018; May 29, 2018; and March 9, 2020). In addition, the dealers have performed four (4) wheel alignments every time Complainant raised the issue. On the last repair, the evidence indicated that the vehicle's right front camber is still in the red. It is apparent that there is an issue with the vehicle's alignment that the dealer's cannot seem to consistently repair, which is concerning especially given the low mileage on the vehicle. However, there have

only been three (3) repair attempts for the issue and not the four (4) attempts required by Occupations Code § 2301.605 to establish the presumption that Respondent had sufficient opportunity to repair the vehicle. As such, the hearings examiner must hold that the issue does not provide sufficient grounds to order repurchase or replacement of the vehicle. Respondent will be ordered to repair this issue so that the vehicle conforms to the new vehicle limited warranty.

#### **4. Vehicle Vibrating Issue**

Respondent argues that the vehicle does not have any warranty concerns and that the vehicle is operating normally. However, the evidence reveals that the dealers' various service technicians were able to verify a vibration in the vehicle when driving at high speeds. In fact, on one occasion the vehicle's tires were replaced in an attempt to resolve the issue. Complainant has continuously experienced the excessive vibration in the vehicle when driving at high speeds since the date she purchased the vehicle.

Complainant purchased the vehicle on April 24, 2018, and presented the vehicle to an authorized dealer of Respondent due to her concerns with the excessive vibration issue on April 27, 2018; May 10, 2018; May 29, 2018; and October 15, 2019. On this last occasion, Complainant's testimony was that she informed the service advisor that she was concerned about the vehicle vibration, that the service advisor rode with her and felt the vibration, but that the advisor then indicated on the repair order that the caster was out. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a) goes on to specify that a rebuttable presumption that a reasonable number of attempts to repair have been made if four or more repair attempts were made by Respondent and the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first. In addition, Occupations Code § 2301.604(b) provides that for a serious safety hazard the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, Complainant has met the requirements of both of these tests and Respondent has been provided a reasonable number of attempts to conform Complainant's vehicle to the applicable express warranty, but has failed to do so.

The evidence further demonstrates that the defect (excessive vibration in the vehicle at higher speeds) in Complainant's vehicle creates a serious safety hazard. The nature of the condition increases the safety risk and substantially impedes Complainant's ability to control or operate the vehicle for ordinary use or intended purposes. Complainant has met her burden of proof to



establish a warrantable and existing defect or condition that creates a serious safety hazard currently exists in the vehicle.

Moreover, the defect in Complainant's vehicle substantially impairs its use and market value. An unimpaired vehicle with similar mileage should not behave in such a manner. Complainant cannot rely on the vehicle on long distance drives, as she is unable to drive the vehicle on the highway or take it for an extended trip due to the excessive vibration and difficulty in controlling the vehicle on the highway.

Finally, Complainant did serve written notice of her dissatisfaction with the vehicle to Respondent on November 19, 2019. Respondent was provided with a final opportunity to repair the vehicle on either February 24, 2020 or March 9, 2020, when Complainant took the vehicle to Respondent's authorized dealers for repair.

When a complainant establishes that relief under the Lemon Law is appropriate, the manufacturer may be required to repurchase the motor vehicle, or replace the motor vehicle with a comparable motor vehicle. Based on the evidence and the arguments presented, the hearings examiner finds that replacement of the vehicle is the appropriate remedy in this case.

Based on the above analysis, the hearings examiner orders Respondent to replace Complainant's vehicle as further detailed in the Findings of Fact and Conclusions of Law.

### III. FINDINGS OF FACT

1. Paula Payne (Complainant) purchased a new Audi Q3 on April 24, 2018, from Audi Austin North (North) located in Austin, Texas with mileage of 10 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Volkswagen Group of America, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for the first four (4) years or 50,000 miles of ownership, whichever comes first.
3. The vehicle's mileage on the date of hearing was 6,945.
4. At the time of hearing the vehicle's warranty was still in effect.
5. Complainant has had problems with the vehicle vibrating when driven at high speeds, and with the engine starting and idling high. In addition, she has experienced the vehicle pulling to the right when driving it.

6. Complainant took the vehicle for repair to Respondent's authorized dealers, Cavender Audi (Cavender) in San Antonio, Texas and North Park Audi (North Park) in Selma, Texas, in order to address her concerns with the vehicle on the following dates:
  - a. April 27, 2018, at 118 miles;
  - b. May 10, 2018, at 450 miles;
  - c. May 29, 2018, at 598 miles;
  - d. January 4, 2019, at 3,485 miles;
  - e. April 29, 2019, at 4,684 miles; and
  - f. October 15, 2019, at 6,083 miles.
7. On April 27, 2018, Cavender's service technician replaced the vehicle's cabin filter as requested by Complaint. Complainant also informed the service advisor that the vehicle was vibrating, and the technician balanced all four (4) wheels in order to address the vibration concern.
8. On May 10, 2018, Cavender's service technician performed a four (4) wheel alignment to the vehicle to address the issue of the vehicle pulling to the right
9. Also, on May 10, 2018, Cavender's service technician balanced and radial force balanced all four (4) wheels to address the vibration issue which he felt could be a result of the harmonic vibrations caused by the radial force variation of the tires or an imbalance of the wheel and tire assembly.
10. On May 29, 2018, Cavender's service technician performed a four (4) wheel alignment to the vehicle to address the issue of the steering wheel being off center.
11. Also, on May 29, 2018, Cavender's service technician determined that the vibration felt by Complainant when driving was caused by the tires having excessive road force. As a result, all four (4) tires were replaced.
12. On January 4, 2019, the vehicle would not start and had to be towed to North Park for repair.
13. On January 4, 2019, North Park's service technician charged the vehicle's battery and ran diagnostics on the vehicle, but could not find any problem except that the system was too lean off idle. No other repairs were performed at the time.
14. On April 29, 2019, North Park's service technician addressed the complaint that the engine's idle was too high. The technician did not find any stored diagnostic codes and

compared the idle to a similar 2018 Q3 and determined that the vehicles were operating similarly. No repairs were performed for the issue.

15. On October 15, 2019, North Park's North Park's service technician determined that the vehicle was operating as designed in regards to a high idle complaint and that the vehicle's caster was not adjustable, although Complainant indicated that the caster was out of alignment.
16. On November 18, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
17. On November 19, 2019, Complainant mailed a letter to Respondent advising them of her dissatisfaction with the vehicle.
18. On February 24, 2020, Complainant took the vehicle to North Park for repair. The vehicle's mileage at the time was 6,686.
19. During the repair visit described in Findings of Fact #18, North Park's service technician could not find an issue with the engine running rough. He determined that the vehicle was operating as designed. The technician also performed an alignment check, but did no further work for the issue (Complainant declined repair), even though the tow was out of specification.
20. On March 9, 2020, Complainant took the vehicle to Audi Dominion in San Antonio, Texas for repair. The vehicle's mileage at the time was 6,731.
21. During the repair visit described in Findings of Fact #20, Dominion's service technician performed a four (4) wheel alignment in order to address the concern that the vehicle was pulling to the driver's side.
22. At the time of hearing, the vehicle was still drifting to the right, was still vibrating when driven at higher speeds, still seemed to be out of alignment, and was idling so roughly that it sounds like a truck.

23. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$35,602.90
Delivery mileage	10
Mileage at first report of defective condition	118
Mileage on hearing date	6,945
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$35,602.90
Mileage at first report of defective condition				118	
Less mileage at delivery				<u>-10</u>	
Unimpaired miles				108	
Mileage on hearing date				6,945	
Less mileage at first report of defective condition				<u>-118</u>	
Impaired miles				6,827	
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
				<u>108</u>	
	120,000	X	\$35,602.90	=	\$32.04
Impaired miles					
				<u>6,827</u>	
	120,000	X	\$35,602.90	X .5	= <u>\$1,012.75</u>
Total reasonable allowance for use deduction:					\$1,044.80
Purchase price, including tax, title, license and registration					\$35,602.90
Less reasonable allowance for use deduction					-\$1,044.80
Plus filing fee refund					<u>\$35.00</u>
<b>TOTAL REPURCHASE AMOUNT</b>					\$34,593.10

24. On February 6, 2020, 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.

25. The hearing in this case convened telephonically on May 14, 2020, before Hearings Examiner Edward Sandoval. Paula Payne (Complainant) represented herself. Dale Green,

Complainant's husband, also testified for Complainant. Respondent was represented by Susan Lucas, contract representative. The hearing record closed on May 14, 2020.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. 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 (the vehicle vibrates excessively when driven at higher speeds) that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle has an existing defect or condition (the vehicle vibrates excessively when driven at higher speeds) that substantially impairs Complainant's use or 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 nonconformities 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 repurchase of the 2018 Audi Q3 under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is

substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;

2. Respondent shall repurchase the subject vehicle in the amount of **\$34,593.10**. The total refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent, Volkswagen Group of America, Inc., shall repair the warrantable defect (the vehicle vibrates excessively when driven at higher speeds) as well as the other warrantable defects specified in this order (the vehicle pulling to the right and the engine's high idle) in the reacquired vehicle identified in this Decision.

**SIGNED July 15, 2020.**



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