

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 20-0008979 CAF**

<b>RICKY SHORT, JR.,</b>	§	<b>BEFORE THE OFFICE</b>
Complainant	§	
	§	
v.	§	<b>OF</b>
	§	
<b>FORD MOTOR COMPANY,</b>	§	
Respondent	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Ricky Short, Jr. (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence does not show that the subject vehicle qualifies for repurchase/replacement or warranty repair.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> 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 October 19, 2020, by telephone/videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. Christina Short represented the Complainant. The Complainant also appeared on his own behalf. Anthony Gregory, Consumer Affairs Legal Analyst, represented the Respondent.

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<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

##### 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.”<sup>5</sup>

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<sup>2</sup> TEX. OCC. CODE § 2301.604(a).

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.601(4).

<sup>5</sup> *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.”<sup>6</sup>

**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.<sup>7</sup>

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.<sup>8</sup>

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<sup>6</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [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.”).

<sup>7</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

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

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

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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

#### **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;<sup>13</sup> (2) the respondent was given an opportunity to cure the defect or nonconformity;<sup>14</sup> and (3) the Lemon Law complaint was filed within six months after the earliest

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<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>10</sup> TEX. OCC. CODE § 2301.605(c).

<sup>11</sup> *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.’”).

<sup>12</sup> *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.”).

<sup>13</sup> 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 satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

<sup>14</sup> TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent allows a dealer to attempt repair

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.<sup>15</sup>

## 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.<sup>16</sup> The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”<sup>17</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>18</sup> 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.<sup>19</sup> Accordingly, the Complainant cannot prevail where the existence of any required fact appears unlikely or 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.<sup>20</sup> The complaint must state “sufficient facts to enable the department and the party complained against to know the

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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.

<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>16</sup> TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

<sup>17</sup> TEX. OCC. CODE § 2301.603(a).

<sup>18</sup> 43 TEX. ADMIN. CODE § 215.66(d).

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

<sup>20</sup> “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

nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”<sup>21</sup> However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.<sup>22</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>23</sup>

## 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.<sup>24</sup> 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).<sup>25</sup> However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”<sup>26</sup>

### B. Summary of Complainant’s Evidence and Arguments

On March 16, 2018, the Complainant, purchased a new 2018 Ford F-350 from Sour Lake Ford, a franchised dealer of the Respondent, in Sour Lake, Texas. The vehicle had 10 miles on the odometer at the time of purchase. The vehicle’s limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first, and a powertrain coverage for five years or 60,000 miles, whichever occurs first.

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be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

<sup>21</sup> 43 TEX. ADMIN. CODE § 215.202(a)(3).

<sup>22</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

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

<sup>24</sup> TEX. OCC. CODE § 2301.604.

<sup>25</sup> 43 TEX. ADMIN. CODE § 215.209(a).

<sup>26</sup> 43 TEX. ADMIN. CODE § 215.208(b)(1).

On March 13, 2020, the Complainant provided a written notice of defect to the Respondent. On March 14, 2020, the Complainant filed a complaint with the Department alleging that the vehicle exhibited a “death wobble”; the check engine light came on with white smoke coming out of the tail pipe due to a turbocharger defect; and the check engine light came on (with no specified symptoms). In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

<b>Date</b>	<b>Miles</b>	<b>Issue</b>
02/15/2019	24,837	Front end wobble
04/30/2019	33,265	Front end wobble
05/14/2019	33,492	Vehicle gets loose (wobble)
09/18/2019	43,011	Front end wobble
12/23/2019	48,993	Check engine light with heavy white smoke (turbocharger); wobble
02/10/2020	49,453	Check engine light related to PCM (powertrain control module)
03/02/2020	50,956	Check engine light related to oil in the DPF (diesel particulate filter) from the turbocharger repair

The Complainant testified that he was the primary driver of the subject vehicle. He stated that the death wobble had been resolved. With respect to the turbocharger defect, he described that white smoke came out when accelerating. He first noticed the issue when coming home from work but could not recall the date. The Complainant affirmed that the vehicle did not exhibit the white smoke issue after repair. Mrs. Short added that the vehicle was taken in for repair again three months later. The Complainant clarified that the subsequent repair visit was not for the white smoke issue. The Complainant did not know the reason for the latest check engine light and did not notice any associated symptoms. Mrs. Short noted that they currently had the vehicle but were supposed to make an appointment for a future visit. The Complainant stated that the latest check engine light came on about a week before the hearing. Mrs. Short pointed out that the check engine light was still on.

### **C. Summary of Respondent’s Evidence and Arguments**

The Respondent contended that the vehicle did not satisfy the repair requirements for repurchase or replacement. Mr. Gregory testified that the first notice of the steering issue occurred on February 15, 2019, at 24,837 miles. The second visit for the steering issue occurred on May 14, 2019, at 33,492 miles. The vehicle was presented for a check engine light and steering on

December 23, 2019, at 48,993 miles. The vehicle was brought in for a check engine light on February 10, 2020. At this visit, the dealer performed TSB (technical service bulletin) 19-2392 and reset parameters and reprogrammed the PCM. The vehicle was returned to the dealership on March 2, 2020, for a check engine light. Mr. Gregory stated that the Respondent's field service engineer provided two possible appointment dates for the manufacturer's repair attempt.<sup>27</sup> However, the Respondent did not receive a response from the Complainant.

#### **D. Analysis**

As described below a preponderance of the evidence does not show the vehicle satisfies the requirements for repurchase or replacement or repair relief.

##### **1. Warrantable Defect**

As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect) that continues to exist after repairs.<sup>28</sup> The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In part, the warranty generally states that:

Under your New Vehicle Limited Warranty if:

- your Ford vehicle is properly operated and maintained, and
- was taken to a Ford dealership for a warranted repair during the warranty period,

then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.

This warranty does not mean that each Ford vehicle is defect free. Defects may be unintentionally introduced into vehicles during the design and manufacturing processes and such defects could result in the need for repairs. Ford provides the

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<sup>27</sup> Respondent's Ex. 1, Manufacturer's Response Form with Email Notifying Customer of the Final Repair Attempt proposed dates.

<sup>28</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.



New Vehicle Limited Warranty only to remedy manufacturing defects that result in vehicle part malfunction or failure during the warranty period.<sup>29</sup>

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects) causing a malfunction or failure during the warranty period.<sup>30</sup> The warranty identifies the warranty period as follows: “Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse. In that case, your coverage ends at 36,000 miles.” The warranty provides emissions defects and emissions performance coverage for two years or 24,000 miles<sup>31</sup> and certain emissions parts coverage for eight years or 80,000 miles.<sup>32</sup>

As noted above, the law requires the alleged warrantable defect to continue to exist after repairs. In other words, the evidence must show that the defect currently exists. However, the Complainant testified that the wobble and the turbocharger (check engine light and smoke) issues did not reoccur after repair. Accordingly, the wobble and turbocharger issues cannot support any relief. Additionally, the bumper to bumper coverage expired upon reaching 36,010 miles on the odometer (36,000 miles after purchase). However, the 50,000 mile powertrain coverage appears to apply to the check engine light associated with the turbocharger/smoke and oil left in the DPF from the turbocharger repair. The check engine light associated with the PCM programming appears to be a design issue (i.e., a software design issue) and not a manufacturing defect.

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<sup>29</sup> Complainant’s Ex. 3, 2018 Model Year Ford Warranty Guide.

<sup>30</sup> 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.”).

<sup>31</sup> The warranty’s 36,000 mile bumper to bumper coverage provides longer coverage for emissions defects than the 24,000 mile emissions coverage, making the emissions coverage inconsequential. Complainant’s Ex. 3, 2018 Model Year Ford Warranty Guide.

<sup>32</sup> The 80,000 mile emissions parts coverage only applies to: the catalytic converter, electronic emissions control unit, and onboard emissions diagnostic devices. Complainant’s Ex. 3, 2018 Model Year Ford Warranty Guide.

## **2. Reasonable Repair Attempts**

As a condition for repurchase/replacement, the vehicle must have had a reasonable number of repair attempts. In relevant part, the Lemon Law's presumptions for reasonable repair require four or more repairs for the same issue before 24,000 miles after delivery or a total of 30 days out of service before 24,000 miles after delivery. In this case, none of the repairs occurred before 24,000 miles (24,010 mile on the odometer). The first repair visit, for the wobble, occurred at 24,837 miles on the odometer. Although the presumptions do not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts, the facts in this case do not warrant a departure from the Lemon Law's presumptions. In sum, none of the issues support granting or repurchase ore replacement relief.

## **3. Lemon Law Filing Deadline**

The Lemon Law prohibits granting repurchase or replacement unless the complaint was filed by six months after 24,000 miles since delivery of the vehicle. In this case, the complaint specified February 2, 2019, as the date the vehicle reached 24,000 miles.<sup>33</sup> Accordingly, the complaint must have been filed by August 2, 2019. However, the complaint was filed on March 14, 2020, about seven months past the deadline. Consequently, the Lemon Law prohibits granting of either repurchase or replacement.

## **4. Warranty Repair Relief**

A vehicle that does not qualify for repurchase or replacement may still qualify for repair relief under the Warranty Performance Law. As described in the discussion of applicable law, the Warranty Performance Law requires the vehicle to have a currently existing defect covered by warranty and notice of that defect provided to the Respondent or the Respondent's agent. In this case, the testimony showed that the vehicle currently had the check engine light illuminated since about a week before the hearing. However, the Complainant did not know what the last check engine light related to and the evidence does not otherwise indicate the nature of the check engine light. Accordingly, the evidence does not show whether the latest check engine light is a reoccurrence of a prior issue for which the Complainant already provided notice or a new issue raised for the first time at the hearing. Moreover, the complaint in this case does not include the

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<sup>33</sup> Consistent with the complaint, repair orders show the vehicle had 24,837 miles on February 15, 2019.

latest check engine light and the record shows no repair visits or other notice provided for the latest check engine light. Further, the applicable warranty coverage cannot be determined since the evidence does not show the nature of the check engine light, e.g. whether the check engine light concerns the powertrain or emissions, which have different coverages. The comprehensive bumper to bumper coverage would have covered the check engine light but that coverage expired at 36,010 miles. With respect to the currently existing check engine light, a preponderance of the evidence does not show notice provided to the Respondent or Respondent's agent or whether the warranty applies. Consequently, the vehicle does not qualify for repair relief.

### III. Findings of Fact

1. On March 16, 2018, the Complainant, purchased a new 2018 Ford F-350 from Sour Lake Ford, a franchised dealer of the Respondent, in Sour Lake, Texas. The vehicle had 10 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first, powertrain coverage for five years or 60,000 miles, whichever occurs first, emissions coverage for two years or 24,000 miles, and coverage of certain emissions parts for eight years or 80,000 miles.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
02/15/2019	24,837	Front end wobble
04/30/2019	33,265	Front end wobble
05/14/2019	33,492	Vehicle gets loose (wobble)
09/18/2019	43,011	Front end wobble
12/23/2019	48,993	Check engine light with heavy white smoke (turbocharger); wobble
02/10/2020	49,453	Check engine light related to PCM (powertrain control module)
03/02/2020	50,956	Check engine light related to oil in the DPF (diesel particulate filter) from the turbocharger repair

4. On March 13, 2020, the Complainant provided a written notice of defect to the Respondent.
5. On March 14, 2020, the Complainant filed a complaint with the Department alleging that the vehicle exhibited a "death wobble"; the check engine light came on with white smoke

- coming out of the tail pipe; and the check engine light came on (with no specified symptoms).
6. On July 23, 2020, 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 October 19, 2020, by telephone/videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. Christina Short represented the Complainant. The Complainant also appeared on his own behalf. Anthony Gregory, Consumer Affairs Legal Analyst, represented the Respondent.
  8. The wobble issue was successfully resolved and did not recur after the December 23, 2019, repair visit.
  9. The turbocharger issue, along with the associated check engine light and white smoke from the exhaust, was successfully resolved and did not recur after the December 23, 2019, repair visit.
  10. The check engine light illuminated on the vehicle approximately a week before the hearing and remained on as of the hearing.
  11. The complaint did not include the current check engine light issue.
  12. Notice of the current check engine light issue was not provided to the Respondent or Respondent's agent.
  13. The nature of the current check engine light is unknown so the applicable warranty period cannot be determined (whether 36,000 miles for bumper to bumper coverage, 60,000 miles for powertrain coverage, or 24,000 or 80,000 miles for emissions coverage).

#### **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 vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not meet the requirement for a reasonable number of repair attempts. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
8. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not timely file the complaint for repurchase or replacement relief. The proceeding must have been commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner. TEX. OCC. CODE § 2301.606(d).
9. 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.
10. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the Respondent's warranty covered the current check engine light. TEX. OCC. CODE §§ 2301.204 and 2301.603.

11. The Complainant's vehicle does not qualify for warranty repair. Neither the Complainant nor an agent of the Complainant notified the Respondent or Respondent's agent of the current check engine light. TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
12. 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**.

**SIGNED December 18, 2020**



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