

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0012485 CAF**

**ELI BEN-SHOSHAN,
Complainant**

v.

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

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Eli Ben-Shoshan (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2018 Range Rover Velar. Complainant asserts that the vehicle is defective because there is an intermittent rattling noise from the driver's side door area. Jaguar Land Rover North America, LLC (Respondent) argued that the vehicle does not have a defect or nonconformity and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect or nonconformity and Complainant is not eligible for 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 December 3, 2020, before Hearings Examiner Edward Sandoval. Eli Ben-Shoshan, Complainant, appeared and represented himself at the hearing. Jaguar Land Rover North America, LLC, Respondent, was represented by John Chambless, attorney with Thompson, Coe, Cousins & Irons, LLP. Also appearing and testifying for Respondent was Brandon Sangster, Customer Satisfaction Senior Technical Specialist. The hearing record closed on December 3, 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.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

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.⁶

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.⁷

“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.⁸

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2018 Range Rover Velar from Land Rover Houston (LRH) in Houston, Texas on May 24, 2018, with mileage of 24 at the time of delivery.⁹ Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for four (4)

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Complainant Ex. 1, Purchase Order dated May 24, 2018.

years or 50,000 miles. On the date of hearing the vehicle's mileage was 12,567. At the time of hearing Respondent's warranty was still in effect.

Complainant testified that his wife is the primary driver of the vehicle. She drives the vehicle approximately 90% of the time. Shortly after purchasing the vehicle, Complainant's wife noticed a noise or rattle from around the top of the window in the left front of the vehicle, near the roof, when she drove the vehicle. Complainant took the vehicle to LRH for repair for the noise issue on June 12, 2018. The service technician adjusted the vehicle's front headliner magnet brackets and applied anti-rattle tape to the vehicle in order to address the noise issue.¹⁰ The vehicle's mileage on this occasion was 148.¹¹ The vehicle was returned to Complainant the same day as the repair. Complainant received a loaner vehicle while his vehicle was being repaired. Complainant stated that he did not hear the noise any longer when he picked up the vehicle from LRH.

Complainant stated that the noise returned after a few days. He said that the noise was intermittent and would stop and start periodically. Complainant took the vehicle to LRH for repair for the noise issue on July 24, 2018. LRH's service technician was unable to duplicate the concern, but stated that the "vehicle has a vibration when lane assist activates."¹² The vehicle's mileage when Complainant took it for repair on this occasion was 1,349.¹³ The vehicle was in the dealer's possession for eight (8) days. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that the rattling noise wasn't too bad for a while, but seemed to get worse over time. He returned the vehicle to LRH for repair for the issue on April 1, 2019. LRH's service technician re-secured the driver's side front door window panel with a rattle kit in order to resolve the issue.¹⁴ The vehicle's mileage at the time was 5,729.¹⁵ The vehicle was in LRH's possession for two (2) days during this repair visit. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he felt that the repair performed on April 1, 2019, did not resolve the noise issue. So, Complainant took the vehicle back to LRH for repair for the issue of a rattling noise from the driver's side front door on April 4, 2019. LRH's service technician adjusted and tightened the driver's side upper seat belt anchor in order to address the issue.¹⁶ The vehicle's

¹⁰ Complainant Ex. 5, Repair Order dated June 12, 2018.

¹¹ *Id.*

¹² Complainant Ex. 6, Repair Order dated July 24, 2018.

¹³ *Id.*

¹⁴ Complainant Ex. 7, Repair Order dated April 1, 2019.

¹⁵ *Id.*

¹⁶ Complainant Ex. 8, Repair Order dated April 4, 2019.

mileage on this occasion was 5,750.¹⁷ The vehicle was in LRH's possession for seven (7) days during this repair visit. Complainant was provided with a loaner vehicle during this period of time.

Complainant testified that his wife continued to hear a rattling noise from the driver's side front door. As a result, Complainant took the vehicle to LRH for repair on April 30, 2019. On this occasion, LRH's service technician determined that the driver's side window was staying open at times and calibrated the driver's side front door window in order to resolve the rattling noise issue.¹⁸ The mileage on the vehicle at the time Complainant took it for repair on this occasion was 6,102.¹⁹ The vehicle was in LRH's possession for eight (8) days on this occasion. Complainant was provided with a loaner vehicle during this repair visit.

Complainant testified that he could not recall if he continued to hear a rattling noise from the front driver's side door when he picked up the vehicle on April 30. However, after about six (6) weeks the noise seemed to return. Complainant took the vehicle to LRH for repair on July 16, 2019. LRH's service technician applied felt tape to the driver's side front door window seal in order to resolve the issue.²⁰ The vehicle's mileage on this occasion was 7,190.²¹ The vehicle was in LRH's possession for nine (9) days on this occasion. Complainant was provided a loaner vehicle at the time.

Complainant stated that the rattling noise from the driver's side front door returned soon after the repair on July 16, 2019. As a result, he took the vehicle back to LRH for repair for the issue on August 8, 2019. LRH's service technician reconfigured all of the vehicle's front door modules, recalibrated all of the vehicle's windows, and applied lubricant to all of the vehicle's door and body moldings in order to resolve the issue.²² The vehicle's mileage at the time was 7,336.²³ The vehicle was in LRH's possession for eight (8) days on this occasion. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant stated that he and his wife continued to hear the rattling noise from the vehicle's driver's side front door. He took the vehicle to LRH for repair for the issue on November 7, 2019. LRH's service technician determined that the vehicle's left front door b pillar was not securing and replaced the pillar and all clips in order to resolve the issue.²⁴ The vehicle's mileage

¹⁷ *Id.*

¹⁸ Complainant Ex. 9, Repair Order dated April 30, 2019.

¹⁹ *Id.*

²⁰ Complainant Ex. 10, Repair Order date July 16, 2019.

²¹ *Id.*

²² Complainant Ex. 11, Repair Order dated August 8, 2019.

²³ *Id.*

²⁴ Complainant Ex. 12, Repair Order dated November 7, 2019.

on this occasion was 8,389.²⁵ The vehicle was in LRH's possession for nine (9) days. Complainant received a loaner vehicle while his vehicle was being repaired.

On April 30, 2020, Complainant mailed a letter to Respondent informing them of his dissatisfaction with the vehicle.²⁶ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on June 17, 2020.²⁷

Complainant stated that he and his wife continued to hear the rattling noise from the driver's side front door intermittently when they drove the vehicle. He stated that sometimes the rattle is non-stop when driving the vehicle. Complainant testified that he was never informed by anyone at LRH that the rattling noise was a normal sound for the vehicle.

C. Respondent's Evidence and Arguments

Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for Respondent. He has worked in the automotive industry for over thirty years. In the past, Mr. Sangster worked for Karma Automotive, Tesla Automotive, and FCA US. He was worked in various positions with his prior employers, including global operations, fixed operations, technical team leader, and field technical specialist. Mr. Sangster was hired by Respondent in his current position about 1½ years ago. Mr. Sangster previously was an Automotive Service Excellence (ASE) Certified Master Technician, but he allowed the certification to lapse. He currently is classified at the highest technical level (Level 4) for Respondent.

Mr. Sangster testified that he has never personally seen Complainant's vehicle. Respondent did not request an opportunity for a final inspection or repair attempt on the vehicle.

Mr. Sangster stated that it is not unusual for a vehicle to make noises when they're being operated. Not all vehicles make the same noises. Mr. Sangster testified that noise issues are not covered by Respondent's warranty.²⁸ Noises are very subjective and several things can come into play to cause a vehicle to make a noise, *i.e.*, road conditions, vehicle engines, and driving habits.

Mr. Sangster stated that after reviewing the videos submitted as evidence by Complainant that he feels that different noises are in each video. The rattle noise is intermittent and doesn't seem to be in the same area of the vehicle. He feels that the rattling or noise issue doesn't substantially

²⁵ *Id.*

²⁶ Complainant Ex. 13, Letter to Jaguar Land Rover North America, LLC dated April 30, 2020.

²⁷ Complainant Ex. 14, Lemon Law Complaint. Complainant dated June 17, 2020.

²⁸ Complainant Ex. 15, Excerpts from Manufacturer's Warranty Manual, p. 9. The warranty provides that normal noise or vibration in a vehicle is not covered by the manufacturer's warranty.

affect Complainant's ability to use or control the vehicle nor does it substantially affect the vehicle's market value. Mr. Sangster does not feel that the complained of rattling noise creates a safety issue with the vehicle.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or 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 or condition, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant's concern involved a "rattling" noise that he hears intermittently from the vehicle's driver's side front door when the vehicle is being driven. Complainant's testimony was that this noise was still occurring at the time of hearing. Complainant provided videos as evidence to show that an unusual noise can be heard when the vehicle is driven and the noise can be heard on the video recording.

There is no doubt that Complainant does hear a rattling noise intermittently when driving the vehicle. However, the presence of a noise is insufficient to prove the existence of a warrantable defect in a vehicle. There has to be a relationship between the complained of noise and a warrantable defect or nonconformity in the vehicle, or alternatively, that a warrantable defect or nonconformity is the source of the complained of noise. It is understandable that the noise can be annoying and Complainant testified as much. However, the rattling noise does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and it does not create substantial risk of fire or explosion.

In addition, the rattling noise does not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it's questionable that the rattling noise would affect the purchase price, since most people would not even notice it.

Therefore, the hearings examiner finds that there is no defect with the vehicle as defined in the Occupations Code and, as such, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 12,567 and it remains under warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Eli Ben-Shoshan (Complainant) purchased a new 2018 Range Rover Velar on May 24, 2018, from Land Rover Houston (LRH) in Houston, Texas, with mileage of 24 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Jaguar Land Rover North America, LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 12,567.
4. Respondent's warranty was still in effect at the time of hearing.
5. Complainant hears an intermittent rattling noise from the vehicle's driver's side front door.
6. Complainant took the vehicle to Respondent's authorized dealer, LRH, on the following dates in order to address his concerns regarding the rattling noise coming from the driver's side front door:
 - a. June 12, 2018, at 148 miles;
 - b. July 24, 2018, at 1,349 miles;
 - c. April 1, 2019, at 5,729 miles;
 - d. April 4, 2019, at 5,750 miles;
 - e. April 30, 2019, at 6,102 miles;
 - f. July 16, 2019, at 7,190 miles;
 - g. August 8, 2019, at 7,336 miles; and
 - h. November 7, 2019, at 8,389 miles.

7. On June 12, 2018, LRH's service technician readjusted the front headliner magnet brackets and applied anti-rattle tape to resolve the issue of a noise coming from the front roof of the vehicle.
8. On July 24, 2018, LRH's service technician was unable to duplicate a concern with a window rattle from the vehicle, although he indicated that the vehicle will vibrate when the lane assist system activates.
9. On April 1, 2019, LRH's service technician re-secured the driver's side window panel with a rattle kit in order to resolve a rattling noise issue.
10. On April 4, 2019, LRH's service technician adjusted and tightened the driver's side upper seat belt anchor in order to resolve the issue of a rattling noise from the driver's side front door.
11. On April 30, 2019, LRH's service technician calibrated the driver's side front door window because the window was staying open occasionally and causing a rattling noise from the door.
12. On July 16, 2019, LRH's service technician applied felt tape on the driver's side door window seal in order to resolve an issue with a rattling noise coming from the area.
13. On August 8, 2019, LRH's service technician recalibrated all of the vehicle's windows, reconfigured all of the vehicle's door modules, and applied lubricant to all door and body moldings in order to resolve an issue with a driver's side front door rattle.
14. On November 7, 2019, LRH's service technician replaced the vehicle's left front b pillar and all clips in order to resolve an issue with a driver's side front door rattle.
15. On April 30, 2020, Complainant mailed a letter to Jaguar Land Rover North America, LLC notifying them of his dissatisfaction with the vehicle.
16. On June 17, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
17. Complainant still intermittently hears a rattling noise from the vehicle's driver's side front door.

18. On August 11, 2019, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
19. The hearing in this case convened telephonically on December 3, 2020, before Hearings Examiner Edward Sandoval. Eli Ben-Shoshan, Complainant, appeared and represented himself at the hearing. Jaguar Land Rover North America, LLC, Respondent, was represented by John Chambliss, attorney with Thompson, Coe, Cousins & Irons, LLP. Also appearing and testifying for Respondent was Brandon Sangster, Customer Satisfaction Senior Technical Specialist. The hearing record closed on December 3, 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 failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.

8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED January 21, 2021.

A handwritten signature in black ink, appearing to read 'Edward Sandoval', is written over a horizontal line.

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