

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0012767 CAF**

DIANE and EDUARDO HERNANDEZ,
Complainants

v.

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

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Diane and Eduardo Hernandez (Complainants) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) [Texas Occupations Code § 2301.204 (Warranty Performance)] for alleged warrantable defects in their vehicle distributed by Jaguar Land Rover North America, LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that qualifies for repurchase/replacement or 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 13, 2021, in El Paso, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented themselves. John Chambless, attorney, represented the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.² 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.”³ 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.⁴ 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.⁵

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

² TEX. OCC. CODE § 2301.603.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁶

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.”⁷

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.⁸

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

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁷ *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.”).

⁸ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

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.¹⁰

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.¹¹

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.¹² 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.¹³

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;¹⁴ (2) the respondent was given an opportunity to cure the defect or

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(c).

¹² *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.’”).

¹³ *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.”).

¹⁴ 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).

nonconformity;¹⁵ and (3) the Lemon Law complaint was filed within six months after the earliest 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.¹⁶

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.¹⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁸

3. Burden of Proof

The law places the burden of proof on the Complainants.¹⁹ The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.²⁰ Accordingly, the Complainants cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

¹⁵ 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 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. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

¹⁷ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 215.66(d).

²⁰ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²¹ 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 for relief under the lemon law.”²² However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainants for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁶ 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

²¹ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” 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.”).

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

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

²⁴ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁵ *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁶ TEX. OCC. CODE § 2301.604.

or similar written documents).²⁷ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁸

B. Summary of Complainants' Evidence and Arguments

On July 20, 2018, the Complainants, purchased a new 2018 Land Rover Discovery Sport from Garcia Midlands Motors, LLC, a franchised dealer of the Respondent, in El Paso, Texas. The vehicle had 31 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first. On July 8, 2020, the Complainants provided a written notice of defect to the Respondent. On June 24, 2020, the Complainants filed a complaint with the Department alleging malfunctions with the sonar sensors/parking sensors (parking aid), auto stop/start, rear lift gate (gesture tailgate), and Bluetooth.

Mr. Hernandez noted that the notice of defect had a typo in the first line: "2008" should have been "2018." Mrs. Hernandez testified that she did not remember exactly when she first noticed the parking sensor issue but it did not begin until 2019. She stated that the parking sensors would randomly go off when moving or parked and the vehicle would stop as if about to hit something. She described the issue as occurring a few times a month. The issue last time occurred as shown in the video from December (2020). Mrs. Hernandez explained that the auto stop/start did not turn on at all, though the auto stop/start status light would come on. She affirmed that the auto stop did not operate when stopped at an intersection. She first noticed the auto stop/start issue in 2019. She did not believe that the auto stop/start had ever worked before. She pointed out that she observed the auto start/stop working in a loaner vehicle as compared to how this feature did not work in her vehicle. She could not recall that the auto stop/start had ever worked. Mrs. Hernandez stated that the gesture tailgate function did not work. The dealer replaced the sensors and the tailgate still did not work. She elaborated that the gesture tailgate never functioned. She last tried to use the gesture tailgate about two weeks before the hearing and the tailgate did not work. Regarding the Bluetooth issue, Mrs. Hernandez explained that when connecting her phone, the music would skip like a scratched CD or record. She indicated that the issue would occur with

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

downloaded music and streaming music. The issue was intermittent. However, the Bluetooth issue did not affect hands-free calling. She believed she last used Bluetooth to play music in September 2020. Mr. Hernandez added that the parking sensors went off in October 2020.

On cross-examination, Mrs. Hernandez responded that they had an insurance claim for the windshield broken by a rock kicked up by an 18-wheeler. Mr. Hernandez stated that the dealer had to recalibrate the sensors. Mr. Hernandez did not notice any fault messages. However, Mrs. Hernandez noted that the parking aid screen would stay on. She recalled that the parking aid warning occurred with no vehicles around in the November 15th (2020) video. Mr. Hernandez affirmed that cars were behind their vehicle at the red light. With respect to the December 1, 2020, video, Mrs. Hernandez stated that nothing blocked the vehicle, with only a sidewalk between the vehicle and the stairs. Mrs. Hernandez testified that she owned an iPhone 11 and that they bought new phones due to the Bluetooth issue but the same issue occurred with the new phones as well. The Complainants confirmed that they did not read the owner's handbook.

C. Inspection

Upon inspection, before the test drive, the vehicle's odometer displayed 24,808 miles. The vehicle had 24,818 miles on the odometer at the end of the test drive. The auto on/off feature activated with the climate control turned off after driving approximately 10 miles, shortly before the end of the test drive. Mr. Hernandez unsuccessfully tried to use the tailgate gesture function without the key fob (smart key). After reviewing the owner's manual, the hearings examiner, while holding the smart key, opened the vehicle's tailgate using a kick movement under the sensors positioned on the sides of the rear bumper, though the gesture tailgate function required several kick movements to open. The vehicle otherwise operated normally.

D. Analysis

As explained in the discussion of applicable law, the law imposes the burden of proof on the Complainant. Accordingly, the Complainant must affirmatively prove every required element by a preponderance of the evidence. In this case, a preponderance of the evidence does not show that the subject vehicle has a defect covered under warranty (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 warranty²⁹ that continues to exist, even after repair.³⁰ In part, the warranty generally states that:

Jaguar Land Rover North America, LLC, warrants that during the warranty period, if a Land Rover 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 Land Rover retailer; any 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 Land Rover North America, LLC, at its sole option.

The warranty period for the vehicle begins on the date of the first retail sale, or on the date of entry into demonstrator or company service, whichever occurs first. The basic warranty period is for four (4) years or until the vehicle has been driven 50,000 miles, whichever occurs first.³¹

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³² Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect. However, the evidence does not show that the alleged issues more likely than not result from manufacturing defects.

1. Sonar Sensors/Parking Sensors (Parking Aid)

The evidence is unclear whether the parking sensor issue arises from a warrantable manufacturing defect or simply from limitations in the vehicle's design. The owner's handbook warns that: "The parking aid sensors may also be externally influenced by noise generated from

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

³⁰ TEX. OCC. CODE § 2301.605.

³¹ Complainant's Ex. 12, Passport to Service.

³² 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.").

air brakes, emergency vehicles, motorcycles, pneumatic drills, or high wind.” Also, the handbook cautions that:

The park assist system may provide inaccurate results if:

- The size or shape of the parking space changes after it was measured.
- There is an irregular curb alongside the parking space, or the curb is covered with leaves, snow, etc.
- The vehicle is being used to transport a load that extends beyond the perimeter of the vehicle.
- The sensors are misaligned due to a minor collision or impact.
- The vehicle had a repair or alteration that was not approved by a retailer/authorized repairer.
- The vehicle is fitted with non-approved wheels or tires.
- The vehicle’s tire pressures are not set to the vehicle’s recommended specification.
- The vehicle tires have significant tire wear.
- The vehicle is fitted with replacement tires. After the normal running-in period, the system adapts to the replacement tires.
- One of the parked vehicles has an attachment at a raised height such as a flatbed truck, snow plough, or cherry picker.
- The parking space is located on a corner or bend.
- The sensors are dirty or covered in mud, ice, or snow, etc.
- The weather is foggy, raining, or snowing, etc.
- The road surface is uneven or rutted.
- The vehicle encounters an obstruction that is thin or wedge shaped.
- The vehicle encounters an obstruction that is elevated and/or protruding, such as ledges or tree branches.
- The vehicle encounters an obstruction with corners and sharp edges.
- A non-approved tow bar or trailer hitch is fitted.
- The sensors are in close proximity to hot exhaust gases from nearby vehicles.
- The sensors have been damaged during vehicle cleaning.

Though this list is not directly applicable to the parking aid, it provides an indication of the limitations in the parking sensors' accuracy. Considering these factors, the parking sensor issue appears as likely to be an unwarranted design limitation as a warrantable manufacturing defect.

2. Auto Stop/Start

The test drive at the hearing demonstrated that the auto stop/start function operated normally as described in the owner's handbook. The handbook explains that: "When activated, the auto stop/start system does not always stop the engine when the vehicle is stationary." Further, the handbook identifies a variety of conditions that prevent the auto stop from triggering:

The following conditions inhibit an auto stop:

- The external temperature is less than approximately 28°F (-2°C).
- The external temperature is more than approximately 104° (40°C).
- The engine or other vehicle systems have not reached their optimum operating temperatures.
- The driver's seat belt is unbuckled.
- Demand from the climate control system requires the engine to be running, e.g., when in defrost mode.
- The vehicle's battery charge is low.
- The auto stop/start system is deactivated.
- After reversing, the vehicle's speed has not exceeded 10 mph (16 km/h).
- A gearshift paddle has been used to select a gear.

The auto stop feature did not initially stop the engine during the test drive. However, after turning off the climate control, the auto stop turned off the engine when at a standstill after driving about 10 miles, consistent with the guidance in the handbook.

3. Rear Lift Gate (Gesture Tailgate)

The inspection of the vehicle showed that the gesture tailgate function operated normally when used according to the owner's handbook. During the inspection at the hearing, the gesture tailgate initially did not work when Mr. Hernandez attempted to activate the gesture tailgate without the smart key nearby. However, the handbook specifies that:

Sensors are positioned within the outer parts of the rear bumper. The sensors recognize movement of a foot below the bumper level and allow automatic opening or closing of the powered tailgate.

....

The gesture action is a smooth kick and return motion, not a swipe motion.

....

A valid smart key must be within 47 in (1.2 m) of the tailgate. The smart key may not be detected if it is inside a metal container, or is shielded by a device with a back-lit LCD screen, e.g., a smartphone. Keep the smart key clear of such devices when attempting hands-free operation of the powered tailgate.

After reviewing the handbook, the hearings examiner activated the gesture tailgate when holding the smart key and making kicking motions under the sensors at the outer parts of the rear bumper. In sum, the gesture tailgate functioned normally as designed when operated according to the handbook.

4. Bluetooth

The owner's handbook contemplates that Bluetooth normally may not function consistently due to factors unrelated to any warrantable defects. The handbook states that: "The Bluetooth® wireless technology devices listed have been tested for compatibility with Jaguar Land Rover vehicles. Performance varies, based on the phone's software version, battery condition, coverage, and the network provider. Phones are warranted by the phone manufacturer, not by the vehicle manufacturer." In the present case, the record does not contain sufficient evidence to show that the complained of Bluetooth performance more likely arises from a warranted vehicle defect than an unwarranted phone or vehicle characteristic.

III. Findings of Fact

1. On July 20, 2018, the Complainants, purchased a new 2018 Land Rover Discovery Sport from Garcia Midlands Motors, LLC, a franchised dealer of the Respondent, in El Paso, Texas. The vehicle had 31 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.
3. On July 8, 2020, the Complainants provided a written notice of defect to the Respondent.
4. On June 24, 2020, the Complainants filed a complaint with the Department alleging malfunctions with the sonar sensors (parking sensors), auto stop/start, rear lift gate (gesture tailgate), and Bluetooth.

5. On September 15, 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.
6. The hearing in this case convened on January 13, 2021, in El Paso, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented themselves. John Chambless, attorney, represented the Respondent.
7. The vehicle's odometer displayed 24,808 miles at the time of the hearing.
8. The vehicle's warranty was in effect at the time of the hearing.
9. Upon inspection, before the test drive, the vehicle's odometer displayed 24,808 miles. The vehicle had 24,818 miles on the odometer at the end of the test drive. The auto on/off feature activated with the climate control turned off after driving approximately 10 miles, shortly before the end of the test drive. Mr. Hernandez unsuccessfully tried to use the tailgate gesture function without the key fob (smart key). After reviewing the owner's manual, the hearings examiner, while holding the smart key, opened the vehicle's tailgate using a kick movement under the sensors positioned on the sides of the rear bumper, though the gesture tailgate function required several kick movements to open. The vehicle otherwise operated normally.
10. The parking aid sensors may be externally influenced by noise from air brakes, emergency vehicles, motorcycles, pneumatic drills, and high winds, among other things.
11. The auto stop/start system does not always stop the engine when the vehicle is stationary. The following conditions inhibit an auto stop: external temperature is less than approximately 28°F (-2°C); external temperature is more than approximately 104° (40°C); engine or other vehicle systems have not reached their optimum operating temperatures; the driver's seat belt is unbuckled; demand from the climate control system requires the engine to be running; the vehicle's battery charge is low; the auto stop/start system is

deactivated; after reversing, the vehicle's speed has not exceeded 10 mph (16 km/h); and a gearshift paddle has been used to select a gear.

12. The gesture tailgate sensors are positioned within the outer parts of the rear bumper. The sensors recognize movement of a foot below the bumper and allow automatic opening or closing of the powered tailgate. The gesture action is a smooth kick and return motion, not a swipe motion. To activate the gesture tailgate function, a valid smart key must be within 47 inches of the tailgate and sufficiently unobstructed.
13. The vehicle's Bluetooth performance varies based on compatibility with the phone and the phone's software version, battery condition, coverage, and network provider.

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 Complainants 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 Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants' vehicle does not qualify for replacement or repurchase. The Complainants 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 Complainants do 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. The Complainants' vehicle does not qualify for warranty repair. The Complainants did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. 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 Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED March 18, 2021



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