

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 20-0014491 CAF**

<b>KATHLEEN JONES, Complainant</b>	§ § § § § § §	<b>BEFORE THE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
v.		
<b>FORD MOTOR COMPANY, Respondent</b>		

**DECISION AND ORDER**

Kathleen Jones (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in her vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainant’s vehicle does not qualify for any relief.

**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 March 23, 2021, by videoconference/telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented herself. Carrie Boehm, 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

Repurchase and replacement relief only apply to new vehicles.<sup>2</sup> 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>3</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>4</sup> In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed 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>5</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

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<sup>2</sup> TEX. OCC. CODE § 2301.603.

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

<sup>4</sup> TEX. OCC. CODE § 2301.604(a).

<sup>5</sup> 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.”<sup>6</sup>

**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>7</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: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.<sup>8</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: (A) at least one attempt to repair

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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).

<sup>7</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>8</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.<sup>9</sup>

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 and: (A) the vehicle is out of service for repair for a cumulative 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; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.<sup>10</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>11</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>12</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>13</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 mailed written notice of the alleged defect or nonconformity to the manufacturer;<sup>14</sup>

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<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>10</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>11</sup> TEX. OCC. CODE § 2301.605(c).

<sup>12</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>13</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>14</sup> TEX. OCC. CODE § 2301.606(c)(1). The Lemon Law does not define the words “mailed” or “mail”, so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com

(2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>15</sup> 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.<sup>16</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>17</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>18</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>19</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>20</sup> Accordingly, the Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

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defines “mail” as “to send by mail; place in a post office or mailbox for transmission” or “to transmit by email.” *Mail. Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/mail> (accessed: April 01, 2016). Also, 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 that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

<sup>15</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 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.

<sup>16</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>17</sup> TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

<sup>18</sup> TEX. OCC. CODE § 2301.603(a).

<sup>19</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>20</sup> *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.<sup>21</sup> 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.”<sup>22</sup> However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.<sup>23</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>24</sup> Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.<sup>25</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>26</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

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<sup>21</sup> “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.”).

<sup>22</sup> 43 TEX. ADMIN. CODE § 215.202(a)(3).

<sup>23</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

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

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

<sup>26</sup> TEX. OCC. CODE § 2301.604.

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

### **B. Summary of Complainant's Evidence and Arguments**

On December 21, 2016, the Complainant, purchased a new 2016 Ford Edge from Mac Haik Ford, a franchised dealer of the Respondent, in Georgetown, Texas. The vehicle had 30 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. On March 6, 2020, the Complainant provided a written notice of defect to the Respondent. On August 4, 2020, the Complainant filed a complaint with the Department alleging that the vehicle had a parasitic drain on the battery.

The Complainant testified that the battery drain issue could occur any day. She described that after driving the vehicle and parking it on the driveway, she would not be able to open the door the next morning (using the key fob). The vehicle would have no power and she would have to use the physical key to get in the vehicle and it would have no power to start or turn on the lights. Sometimes she would drive and park every two or three days and the vehicle would have no power to unlock the door. The Complainant first noticed the issue in November 2017, about one year after purchase. She explained that the battery would not drain weekly but may happen after three or four months. The issue last occurred about one month after the manufacturer's inspection in October 2020. The vehicle would not start after about 28 days. This last occurrence, after 28 days, was the shortest time for the battery to drain. The issue did not appear related to the weather. The Complainant affirmed that she was the only driver. The Complainant testified that she drove about every other day, but made a point to drive at least every three or four days. She would drive a certain distance to try to keep the battery charged. She estimated that she drove 25 miles on an average day. She pointed out that she was retired, so she did not drive to work but she would drive to appointments, the post office, church, and the grocery store. When asked if she drove mostly highway or city miles, she explained that most of her errands were in town, Georgetown, but she would drive highway miles after three or four days: down (west on) State

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<sup>27</sup> 43 TEX. ADMIN. CODE § 215.209(a).

<sup>28</sup> 43 TEX. ADMIN. CODE § 215.208(b)(1).

Highway 29 (University Avenue), north on Ronald Reagan Boulevard (FM 734), east on State Highway 195. That loop, approximately 30 miles, was one route she would drive the vehicle at speeds up to 60 to 65 mph.

On cross-examination, the Complainant confirmed the vehicle had 13,214 miles on the odometer. She noted that in the first year of ownership, she also owned a van, so she drove two vehicles for about a year and a half. She drove less in the past year due to the pandemic. She acknowledged the possibility that she only drove 165 miles a month in the first year.

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

Ms. Boehm contended that the Complainant did not drive enough based on the state wide and national averages for miles driven. Mr. Jason Collar, Field Service Engineer, testified that most vehicles take 60 to 75 minutes to power down. The battery drain can be accurately measured in the sleeping state. Mr. Collar became involved in May 2020 and interacted remotely with the dealer's shop foremen. Testing the battery showed a 0.012A drain. At the final repair attempt, Mr. Collar connected the vehicle to an amperage drain monitor and the initial test was performed for about 3.5 hours. He also requested the dealer to perform the test overnight. Testing showed a battery draw of 0.012A, well below the 0.025A specification. Everything Mr. Collar observed was within published specifications. On cross-examination, Mr. Collar testified that the manufacturer did not have a published minimum mileage requirement for keeping the battery charged.

### **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 qualifies for repurchase/replacement or warranty repair relief.

As an initial matter, the subject vehicle cannot qualify for repurchase or replacement relief because the complaint was filed after the statutory deadline. As explained in the discussion of applicable law, a Lemon Law complaint must be filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles since the date of delivery. In this case, the Complainant took delivery of the vehicle on December 21, 2016. Accordingly, the complaint must have been filed by June 21, 2019, but the complaint was filed on

August 4, 2020. Nevertheless, a vehicle that does not qualify for repurchase or replacement may still qualify for warranty repair relief.

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>29</sup> The Lemon Law does not require that a respondent provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the respondent 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.<sup>30</sup>

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer's specifications, and is not identical to other same model vehicles.<sup>31</sup> A manufacturing defect occurs when the vehicle varies from the manufacturer's design standards, causing that vehicle to differ from other vehicles of the same kind.<sup>32</sup> In other words, a manufacturing defect is an isolated aberration, an unintended configuration occurring only in those vehicles not produced according to the manufacturer's specifications.<sup>33</sup> A defectively manufactured vehicle has a flaw because of

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<sup>29</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

<sup>30</sup> Complainant's Ex. 1, 2016 Model Year Ford Warranty Guide.

<sup>31</sup> *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.--Texarkana 1985), aff'd in part on other grounds, rev'd in part on other grounds, 715 S.W.2d 629 (Tex. 1986) ("Manufacturing defect cases involve products which are flawed, i.e., which do not conform to the manufacturer's own specifications, and are not identical to their mass-produced siblings.").

<sup>32</sup> *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), rev'd on other grounds, 135 S.W.3d 598 (Tex. 2004) ("A manufacturing defect may be distinguished from a design defect. A manufacturing defect occurs when the product varies from the manufacturer-established design standards, causing that product to deviate from the normal safety of other products of its kind.).

<sup>33</sup> *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) ("This distinction between 'aberrational' defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended

some error in making it, such as incorrect assembly or the use of a broken part. Accordingly, manufacturing defects occur during manufacturing and exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics or design defects are not warrantable defects. Design characteristics and design defects result from the vehicle's specified design, which exists before manufacturing, and not from any error during manufacturing.<sup>34</sup> Because the warranty only covers manufacturing defects, any non-manufacturing issues do not qualify for relief. Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

In the present case, the evidence shows the amperage draw on the battery conforms to the manufacturer's specifications. An initial test showed a battery draw of 0.020A. A second, longer test showed a battery draw of 0.012A. Both amperage draws fall within the manufacturer's maximum specification of 0.025A. The field service engineer verified the charging voltage at 14.6 Volts. In sum, the vehicle's battery discharged and charged in conformance with the manufacturer's specifications. As outlined above, the manufacturer's specifications determine what constitutes a defect. Consequently, the battery discharge in this case is not a defect. Further, the record reflects that the Complainants driving patterns may not sufficiently charge the battery. Looking at the mileage over the life of the vehicle, the odometer had 30 miles at the time of purchase, October 21, 2016, and 13,214 miles on the day of the hearing, March 23, 2021, for a total of 13,184 miles driven over 1,614 days, an average of about eight miles per day<sup>35</sup> or about 2,982 miles per year. For comparison, the annual miles driven per vehicle in Texas was 15,641 miles. Even when compared to the lowest annual miles driven in any state (7,761 miles in Alaska),<sup>36</sup> the subject vehicle's annual mileage is substantially lower. Although the Complainant may drive what she considers normal for a retiree, the Warranty Performance Law only requires that the vehicle conform to the manufacturer's specifications. Although the battery draw may be

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configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].”).

<sup>34</sup> In contrast to manufacturing defects, “[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves.” *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

<sup>35</sup> 8.169 miles.

<sup>36</sup> Respondent's Ex. 1, Manufacturer Response.

higher than desired for the Complainant's driving patterns, such battery draw is nevertheless within specifications and therefore not a defect.

### III. Findings of Fact

1. On December 21, 2016, the Complainant, purchased a new 2016 Ford Edge from Mac Haik Ford, a franchised dealer of the Respondent, in Georgetown, Texas. The vehicle had 30 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.
3. 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.<sup>37</sup>
4. On March 6, 2020, the Complainant provided a written notice of defect to the Respondent.
5. On August 4, 2020, the Complainant filed a complaint with the Department alleging that the vehicle had a parasitic drain on the battery.
6. On October 29, 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 March 23, 2021, by videoconference/telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. The

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<sup>37</sup> Complainant's Ex. 1, 2016 Model Year Ford Warranty Guide.

Complainant, represented herself. Carrie Boehm, Consumer Affairs Legal Analyst, represented the Respondent.

8. The vehicle's odometer displayed 13,214 miles at the time of the hearing.
9. The warranty expired on December 21, 2019.
10. The amperage draw on the vehicle's battery conforms to the manufacturer's specifications. An initial test showed a battery draw of 0.020A. A second, longer test showed a battery draw of 0.012A. Both amperage draws fall within the manufacturer's maximum specification of 0.025A.

#### **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 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).

7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
9. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
10. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

**V. Order**

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

**SIGNED May 4, 2021**



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