

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0007801 CAF**

**PAUL JACKMAN,
Complainant**

v.

**FCA US LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Paul Jackman (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2021 Jeep Gladiator. Complainant asserts that the vehicle's throttle surges sporadically in that when he steps on the vehicle's clutch without letting up and without shifting gears or stepping on the brakes or accelerator the engine's RPM's will go up and then down before stabilizing. FCA US LLC (Respondent) argued that no defect or nonconformity currently exists in the vehicle, the vehicle is operating as designed, and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for repurchase or replacement 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 on August 5, 2021, via Microsoft Teams before Hearings Examiner Edward Sandoval. Paul Jackman, Complainant, appeared and represented himself at the hearing. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. Also appearing for Respondent was Tymothy Mancini, Technical Advisor. The Hearings Examiner determined that it was necessary to test drive and inspect the vehicle, so the hearing was recessed and continued until September 17, 2021.

The hearing reconvened on September 17, 2021, before Hearings Examiner Edward Sandoval at the Texas Department of Motor Vehicles Regional Service Center in Houston, Texas. Paul Jackman, Complainant, appeared and represented himself at the hearing. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. Also appearing for Respondent was Tymothy Mancini, Technical Advisor. The hearing record closed on September 17, 2021.

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 repair or correct the defect or condition.³ Fourth, the owner must have provided 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 can be established 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

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

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).

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

“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

Finally, a rebuttable presumption can be established 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 that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs 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.⁹

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner’s vehicle is being repaired by a franchised dealer.¹⁰

B. Complainant’s Evidence and Arguments

1. Paul Jackman’s Testimony

Complainant purchased a new 2021 Jeep Gladiator on December 30, 2020, from Classic Dodge–Chrysler–Jeep (Classic) located in Denton, Texas.¹¹ The vehicle’s mileage at the time of delivery was 13.¹² Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.¹³ In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for five (5) years or 60,000 miles.¹⁴ On the date of the original hearing, the vehicle’s mileage was 1,601 miles and the vehicle’s warranties were still in effect. On the date the hearing reconvened the vehicle’s mileage was 1,687 and the vehicle’s warranties were still in effect.

Complainant testified that he is the primary driver of the vehicle. Complainant stated that he ordered the vehicle online and that he did not test drive it before purchasing it. Complainant stated that he believes that the vehicle, which has a manual transmission, intermittently has a throttle surge which he feels could create a safety issue. The problem occurs when he steps on the

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 3, Buyer’s Order dated December 30, 2020.

¹² Odometer Disclosure Statement dated December 30, 2020.

¹³ Complainant Ex. 12, Jeep 2021 Warranty – All Vehicles.

¹⁴ *Id.*

vehicle's clutch without letting up and without shifting gears or stepping on the brakes or accelerator the engine's RPM's will go up and then down before stabilizing.

Complainant testified that after driving the vehicle for approximately 300 to 400 miles, he found that the vehicle's throttle would surge without input when he stepped on the vehicle's clutch. He took the vehicle for repair for the issue to Texan Chrysler–Dodge–Jeep–Ram (Texan) located in Humble, Texas on January 23, 2021.¹⁵ Texan's service technician was unable to duplicate the concern at the time.¹⁶ The vehicle's mileage on this occasion was 424.¹⁷ Complainant was contacted by a dealer representative on January 28, 2021 that his vehicle was ready for pickup and then later that day was informed that the service manager was going to do additional test drives and the vehicle was not actually ready for pickup. The vehicle was in Texan's possession until April 9, 2021. Complainant was not provided a loaner vehicle while his vehicle was being repaired.

On March 3, 2021, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.¹⁸ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 11, 2021.¹⁹

Complainant testified that on April 9, 2021, he picked up his vehicle from Texan and test drove it. He felt that the issue had not been resolved (he was able to recreate the issue in the dealer's parking lot before leaving the dealership) and immediately returned the vehicle to the dealer. While the vehicle was in the dealer's possession, Respondent's representative, a technical advisor, inspected the vehicle.²⁰ No repairs were performed on the vehicle at this time as the technical advisor found no problem with the vehicle.²¹ The vehicle's mileage on this occasion was 444.²² Complainant testified that the vehicle was in Classic's possession until April 16, 2021. Complainant was not provided with a loaner vehicle while his vehicle was being repaired. Complainant testified that the issue was still present when he picked up the vehicle.

Complainant returned the vehicle to Texan on May 12, 2021. The service technician inspected the vehicle and reported that the vehicle was operating as designed.²³ No repair was performed

¹⁵ Complainant Ex. 5, Repair Order dated January 22, 2021.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 2, Letter to FCA US LLC Customer Care dated March 3, 2021.

¹⁹ Complainant Ex. 1, Lemon Law Complaint dated March 11, 2021.

²⁰ Complainant Ex. 6, Repair Order dated April 9, 2021.

²¹ *Id.*

²² *Id.*

²³ Complainant Ex. 7, Repair Order dated May 12, 2021.

during this visit. The vehicle's mileage on this occasion was 1,176.²⁴ The vehicle was in Classic's possession until May 18, 2021.²⁵ Complainant was not provided with a loaner vehicle.

Complainant testified that he took the vehicle to an independent mechanic, Sal's Auto, LLC in Kingwood, Texas, on April 20, 2021 for a second opinion on his concerns. During a test drive, Salomon Morales (mechanic) was able to observe and duplicate Complainant's concerns.²⁶ Complainant returned the vehicle to Sal's Auto, LLC on May 27, 2021.²⁷ Again, Mr. Morales was able to verify and duplicate the concern.

Complainant testified that he took the vehicle to another independent mechanic, Kenneth's Car Care in Kingwood, Texas, on May 27, 2021 for an additional opinion. During a test drive, a technician was able to observe and duplicate Complainant's concerns.²⁸ The technician indicated that "the engine rpm will hang and spike when pushing in the clutch."²⁹ He further stated that "the rpm spike when coming back to idle is not normal when compared to other manual trans vehicles the rpm will not maintain idle."³⁰ The technician indicated that he was not able to verify from the owner's manual that the vehicle was operating as designed.³¹

Complainant testified that he took the vehicle to another independent mechanic, Christian Brothers Automotive-Atascocita located in Humble, Texas, on May 27, 2021 for an additional opinion. During a test drive, a technician was able to observe and duplicate the Complainant's concerns.³² The technician indicated that the situation Complainant was experiencing was inconsistent with how manual transmissions normally work and could cause safety concerns in the future.³³

Complainant testified that he took the vehicle to another independent mechanic, Kingwood Service Center located in Kingwood, Texas, on May 27, 2021 for an additional opinion. During a test drive, a technician was able to observe and duplicate the Complainant's concerns.³⁴ However, the technician stated that the vehicle's idle was computer controlled and that he

²⁴ *Id.*

²⁵ *Id.*

²⁶ Complainant Ex. 8, Invoice from Sal's Auto, LLC dated May 27, 2021.

²⁷ *Id.*

²⁸ Complainant Ex. 9, Invoice from Kenneth's Car Care dated May 27, 2021.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Complainant Ex. 10, Invoice from Christian Brothers Automotive dated May 27, 2021.

³³ *Id.*

³⁴ Complainant Ex. 11, Invoice from Kingwood Service Center dated May 27, 2021.

assumed that the idle was doing what the computer was specifying and that the issue would have to be addressed by the manufacturer.³⁵

Complainant also indicated that he had purchased several items for the vehicle for which he should be compensated. Complainant purchased a lockbox from Tuffy for \$154.74 which is designed specifically to fit in to the vehicle's console.³⁶ Complainant purchased several flash drives from Amazon for \$23.80 which he used to provide evidentiary videos to the hearings examiner and Respondent for the Lemon Law hearing.³⁷ In addition, Complainant purchased from BarTact a console cover, a bench seat cover, visor covers, and individual seat covers for the vehicle in an amount totaling \$692.97.³⁸ All of these items were specific to the model of the subject vehicle. Complainant purchased a bedliner for the vehicle from Line X of Houston totaling \$568.84.³⁹ Complainant purchased floor liners from WeatherTech for \$229.23.⁴⁰ Finally, Complainant is asking for reimbursement for the cost of sending items through the USPS via registered mail costing \$45.36.⁴¹ The total cost of all of these items is \$1,714.94.

Complainant stated that he does not feel that the concern that he has raised is a design issue with the vehicle. He feels that there is a delay in throttle shift points and that it is a serious safety hazard. Complainant believes that the vehicle's transmission does not behave like a normal manual transmission. He does not believe that the issue has been correctly diagnosed by Respondent or its dealer representatives. Complainant stated that he has no assurance that there will be an unanticipated acceleration event, although he has not experienced one when driving the vehicle. Complainant believes that the issue impedes his ability to operate the vehicle normally. In addition, other things may be wrong with the vehicle which have not manifested yet.

During cross-examination, Complainant admitted that he was approved for a rental vehicle while his vehicle was being repaired and he turned it down. He testified that he has had to adjust the way he shifts gears when driving order to compensate for the throttle surge.

C. Respondent's Evidence and Arguments

Tymothy Mancini, Technical Advisor, testified for Respondent. He stated that he has been in the automotive industry for 14 years. He worked as an independent mechanic for five (5) years before becoming a Technical Advisor for the Respondent. Mr. Mancini has a BS in automotive

³⁵ *Id.*

³⁶ Complainant Ex. 14, Invoice from Tuffy dated December 31, 2020.

³⁷ Complainant Ex. 15, Invoice from Amazon for USB Flash Drives dated April 29, 2021.

³⁸ Complainant Ex. 16, Invoice from BarTact dated January 8, 2021.

³⁹ Complainant Ex. 17, Invoice from Line X of Houston dated January 7, 2021.

⁴⁰ Complainant Ex. 19, Invoice from WeatherTech dated December 30, 2020.

⁴¹ Complainant Ex. 18, Receipts from USPS.

technology. He is also Automotive Service Excellence (ASE) certified in brakes, HVAC, engine repair, engine performance, and electrical systems. Additionally, he is an FCA master technician.

Mr. Mancini stated that he has personally inspected the vehicle on two (2) occasions. He first inspected the vehicle on April 14, 2021 at Texan to inspect the throttle surge issue.⁴² The vehicle's mileage at this time was 498.⁴³ During a 55 mile test drive, Mr. Mancini did not notice any abnormal changes in the throttle and he believed that the vehicle was operating as designed. Mr. Mancini testified that he did not notice any performance issues with the vehicle's engine or transmission during this inspection.

Mr. Mancini inspected the vehicle again on May 17, 2021 at Texan to inspect the throttle surge issue.⁴⁴ The vehicle's mileage at this time was 1,190 miles.⁴⁵ Mr. Mancini again test drove the vehicle for 14 miles and did not notice an abnormal throttle surge. Mr. Mancini felt that the vehicle was operating as designed. Mr. Mancini indicated in his report that the "[i]t is normal to see RPM fluctuation when depressing and releasing the clutch pedal as the PCM [powertrain control module] may see fit to increase or decrease engine RPM for several reasons in addition to the RPM gained or lost by the drivetrain load."⁴⁶

Mr. Mancini stated that he feels the vehicle is operating as designed. He stated that everyone drives differently, and Complainant's driving style could be a factor in the way the vehicle is operating. Mr. Mancini also stated that there had been no allegations from Complainant that the vehicle had accelerated on its own.

During cross-examination, Mr. Mancini explained that a 200 RPM rise is normal for a vehicle when shifting a manual transmission. Mr. Mancini also explained that the brake pedal should always take precedence over the accelerator if both pedals are pressed. Mr. Mancini stated that he did not notice any issues with the throttle surging while pressing on the break. He also stated that a diagnostic trouble code (DTC) would activate on the vehicle's computers or the check engine light (CEL) would illuminate on the vehicle's instrument cluster if something unusual was happening with the vehicle's transmission.

⁴² Respondent Ex. 1, Cherwell Report dated April 14, 2021.

⁴³ *Id.*

⁴⁴ Respondent Ex. 2, Cherwell Report dated May 17, 2021.

⁴⁵ *Id.*

⁴⁶ *Id.*

D. Inspection

On September 17, 2021, the hearing was reconvened in order to inspect the vehicle. The vehicle's mileage on the date of the inspection was 1,687. During the inspection, Complainant drove the vehicle on city streets and at highway speeds. The throttle noticeably surged when he pressed on the clutch without pressing the accelerator. The spike occurred with and without the climate control system on.

Halfway through the inspection, Mr. Mancini test drove the vehicle. He drove the vehicle on city streets and at highway speeds. The throttle noticeably surged when he held in the clutch. The throttle also surged when the clutch was pressed in at the same time as the brake.

Mr. Mancini stated that he believed that the vehicle was operating as designed. He stated that the throttle spikes were simply a product of the engine anticipating a shift and were not a problem when driving normally. He agreed that on a comparable vehicle that he test drove on previous conditions he did not see throttle spikes as severe as he noticed during this test drive. However, he did state that he did not drive the comparison vehicle in the same manner as the Complainant's vehicle and he believed that he would see similar spikes if he drove in the same manner.

E. 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.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant's concern with the vehicle is that the vehicle's throttle will surge when the clutch is depressed without shifting gears or stepping on the brake or accelerator. The evidence presented at the hearing established that there have been instances where when Complainant steps on the vehicle's clutch without letting up and without shifting gears or stepping on the brakes or

accelerator the engine's RPM's will go up and then down before stabilizing. However, the issue does not seem to affect the function or operation of the vehicle. Complainant has not experienced any other issue with the vehicle. The vehicle operates normally except for the one particular situation described by Complainant. The issue does not create a serious safety hazard as it does not *substantially* impede Complainant's ability to control or operated the vehicle for its ordinary use or intended purpose, nor does it create a substantial risk of fire or explosion. In addition, the issue does not *substantially* impair the use or market value of the vehicle. In fact, most potential purchasers probably would not notice the issue if it occurred during a test drive. Therefore, the Hearings Examiner must hold that Complainant has not established the existence of a manufacturing defect in the vehicle which would allow ordering repurchase or replacement relief for Complainant.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of the original hearing, the vehicle's mileage was 1,601 and it remains covered under the warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

III. FINDINGS OF FACT

1. Paul Jackman (Complainant) purchased a new 2021 Jeep Gladiator on December 30, 2020, from Classic Dodge–Chrysler–Jeep (Classic) located in Denton, Texas. The vehicle's mileage at the time of delivery was 13.
2. The manufacturer or distributor of the vehicle, FCA US LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for the first three (3) years or 36,000 miles after deliver, whichever comes first. In addition. Respondent provided a powertrain warranty providing coverage for the vehicle's powertrain for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of the original hearing was 1,601.
4. At the time of hearing the vehicle's warranties were still in effect.
5. When driving the vehicle, Complainant has intermittently experienced situations where the vehicle's throttle surges in that when he steps on the vehicle's clutch without letting

- up and without shifting gears or stepping on the brakes or accelerator the engine's RPM's will go up and then down before stabilizing.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Texan Chrysler–Dodge–Jeep–Ram (Texan) located in Humble, Texas, in order to address his concerns with the vehicle's throttle on the following dates:
 - a. January 28, 2021, at 424 miles;
 - b. April 9, 2021, at 444 miles; and
 - c. May 12, 2021, at 1,176 miles;
 7. On January 28, 2021, the vehicle was taken to Texan for repair for the aforementioned throttle surge.
 8. During the repair visit described in Findings of Fact #7, Texan's service technician was unable to duplicate the concern. No repair was performed during this visit.
 9. On March 3, 2021, Complainant mailed a letter to Respondent advising them that he was dissatisfied with the vehicle.
 10. On March 11, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
 11. On April 9, 2021, Complainant picked up the vehicle from Texan and immediately returned it to the dealer for repair because the issue was still occurring.
 12. On April 14, 2021, Respondent's field service engineer, Tymothy Mancini, performed an inspection of the vehicle at the Texan location. The vehicle's mileage was 498 at the time.
 13. During the inspection described in Finding of Fact #12, Mr. Mancini determined that the vehicle's throttle was not surging, and the vehicle was operating as designed.
 14. On April 20, 2021, Complainant took the vehicle to an independent mechanic, Sal's Auto, LLC. The mechanic was able to duplicate Complainant's concern.
 15. On May 17, 2021, Mr. Mancini performed another inspection of the vehicle at the Texan location. The vehicle's mileage was 1,109 at the time.

16. During the repair visit described in Findings of Fact #15, Mr. Mancini determined that the vehicle was operating as designed and that some RPM fluctuation was normal.
17. On May 27, 2021, Complainant again took the vehicle to an independent mechanic, Sal's Auto, LLC. The mechanic again was able to duplicate Complainant's concern. The vehicle's mileage was 1,202 at the time.
18. On May 27, 2021, Complainant took the vehicle to an independent mechanic, Kenneth's Car Care. The mechanic was able to duplicate Complainant's concern. The vehicle's mileage was 1,215 at the time.
19. On May 27, 2021, Complainant took the vehicle to an independent mechanic, Kingwood Service Center. The mechanic was able to duplicate Complainant's concern. The vehicle's mileage was 1,231 at the time.
20. On May 27, 2021, Complainant took the vehicle to an independent mechanic, Christian Brothers Automotive. The mechanic was able to duplicate Complainant's concern. The vehicle's mileage was 1,242 at the time.
21. None of the automotive repair companies listed in Findings of Fact #'s 17 through 20 are Respondent's authorized repair facilities.
22. The vehicle's throttle continues to surge sporadically when Complainant steps on the vehicle's clutch without letting up and without shifting gears or stepping on the brakes or accelerator.
23. On April 23, 2021, 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.
24. The hearing in this case convened telephonically on August 5, 2021, before Hearings Examiner Edward Sandoval. Paul Jackman, Complainant, appeared and represented himself at the hearing. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. Also appearing for Respondent was Tymothy Mancini, Technical Advisor. The Hearings Examiner determined that it was necessary to test drive

and inspect the vehicle, so the hearing was recessed and continued for September 17, 2021.

25. The hearing reconvened on September 17, 2021, before Hearings Examiner Edward Sandoval at the Texas Department of Motor Vehicles Regional Service Center in Houston, Texas. Paul Jackman, Complainant, appeared and represented himself at the hearing. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. Also appearing for Respondent was Tymothy Mancini, Technical Advisor. The hearing record closed on September 17, 2021.

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 November 5, 2021.



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