

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0011342 CAF**

**MYRA NEWMAN,
Complainant**

v.

**NISSAN NORTH AMERICA, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Myra Newman (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2020 Infiniti QX60. Complainant asserts that the vehicle's collision avoidance system will activate for no reason when she is driving the vehicle causing it to stop suddenly. Nissan North America, Inc. (Respondent) argued that no defect or nonconformity currently exists in the vehicle, and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repurchase 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 October 13, 2021, in Carrollton, Texas before Hearings Examiner Edward Sandoval. Myra Newman, Complainant, appeared and represented herself in the hearing. Also appearing and testifying for Complainant were her ex-husband, David Newman, and a friend, Meagan Arizpe. Respondent, Nissan North America, Inc., was represented by Keaton Tillman, Arbitration Specialist. The hearing record closed on October 13, 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

¹ Tex. Occ. Code § 2301.604(a).

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

“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

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).

⁸ Tex. Occ. Code § 2301.601(4).

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

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. Myra Newman's Testimony

Complainant purchased a new 2020 Infiniti QX60 on July 16, 2020, from Sewell Infiniti of Fort Worth (Sewell) located in Fort Worth, Texas.¹¹ The vehicle's mileage at the time of delivery was 10.¹² Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for four (4) years or 60,000 miles, whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for six (6) years or 70,000 miles. On the date of hearing the vehicle's mileage was 24,532 miles and the vehicle's warranties were still in effect.

Complainant testified that she has experienced several incidents where the vehicle's collision avoidance system has activated for no reason when she's driving the vehicle. In several instances when this has occurred, the vehicle has turned off completely, sometimes in the middle of traffic. The collision avoidance warning light will usually illuminate on the vehicle's dashboard when this occurs. Complainant testified that the collision avoidance system cannot be turned off in the subject vehicle, although she could turn it off in her prior vehicle.

On or about November 20, 2020, Complainant was driving the vehicle to work when the collision avoidance system's warning light illuminated. At the same time, the vehicle's brakes activated causing the vehicle to stop. Complainant was able to override the stop and continued on her way to work. However, about five (5) minutes later the system activated again and caused the vehicle to come to a complete stop and turn off. Complainant was unable to restart the vehicle for about five (5) minutes. The warning light had also illuminated again and would not turn off, even after Complainant restarted the vehicle. Complainant stated that there was no reason for the system to activate as she was not too close to the vehicle in front of her and there was no debris or anything in the road. Complainant took the vehicle to Sewell for repair for the issue on November 20, 2020. The warning light was still illuminated when she arrived at the dealership which Sewell's service technician observed.¹³ The technician replaced the vehicle's radar sensor bracket and calibrated it in order to resolve the issue.¹⁴ The vehicle's mileage on this occasion

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 2, Retail Purchase Agreement dated July 16, 2020.

¹² *Id.*

¹³ Respondent Ex. 4, Repair Order dated November 20, 2020.

¹⁴ *Id.*

was 7,700.¹⁵ Complainant stated that the vehicle was in Sewell's possession for approximately two (2) weeks. She was provided with a loaner vehicle while her vehicle was being repaired.

When Complainant got the vehicle back from Sewell, the warning light was off. Complainant drove the vehicle for approximately three (3) weeks before the problem arose again. The collision avoidance warning light illuminated for no reason and the vehicle came to a stop. Complainant experienced several incidents with the problem occurring before she took the vehicle for repair to Sewell on December 30, 2020. Sewell's service technician was not able to recreate the issue.¹⁶ In addition, the technician was unable to find any stored diagnostic trouble codes (DTC's) on the vehicle's computers.¹⁷ No repair was performed at the time. The vehicle's mileage on this occasion was 9,538.¹⁸ The vehicle was in Sewell's possession until January 22, 2021. Complainant was provided a loaner vehicle while her vehicle was being repaired.

On January 16, 2021, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.¹⁹

Complainant testified that she continued to experience problems with the collision avoidance system activating and the warning light illuminating. After about March of 2021, the warning light stopped turning on every time the problem occurred, but the collision avoidance system continued to activate for no reason. She took the vehicle to Sewell for repair for the issue on May 12, 2021. Sewell's service technician inspected the vehicle but could not recreate the problem nor could he find any stored DTC's.²⁰ No other work was done to the vehicle at the time. The vehicle's mileage on this occasion was 17,174.²¹ Complainant testified that the vehicle was in Sewell's possession until May 25, 2021. Complainant was provided with a loaner vehicle while her vehicle was being repaired. Complainant testified that the collision avoidance warning light was illuminated when she took the vehicle to Sewell for repair but was off when she picked up the vehicle.²²

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 15, 2021.²³

¹⁵ *Id.*

¹⁶ Respondent Ex. 2, Repair Order dated December 30, 2020.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 6, Letter to Infiniti dated January 16, 2021.

²⁰ Respondent Ex. 3, Repair Order dated May 12, 2021.

²¹ *Id.*

²² Although Complainant stated that the warning light was illuminated at the time she took the vehicle for repair, the repair invoice does not indicate that the light was on.

²³ Complainant Ex. 1, Lemon Law Complaint dated May 15, 2021.

Complainant testified that she continued to experience issues with the collision avoidance system activating for no reason and the warning light illuminating. In addition, she began to experience other issues with the vehicle: the gas indicator began to malfunction, the tire pressure monitor system (TPMS) would not work properly (this was observed during the test drive taken at the time of hearing), and the center display screen would go black and not be responsive to touch.²⁴ Complainant took the vehicle to Sewell for repair for the issues on July 12, 2021. The service technician could not duplicate any of the concerns with the vehicle.²⁵ The vehicle's mileage at the time was 20,288.²⁶ The vehicle was in Sewell's possession until August 16, 2021 during this repair. Complainant was provided a loaner vehicle while her vehicle was being repaired. Complainant testified that the vehicle was inspected by Respondent's representative on August 2, 2021, while the vehicle was at the Sewell dealership.

Complainant testified that she is concerned for her and her children's safety in the vehicle. She stated that when the collision avoidance system activates, sometimes the vehicle will come to a stop and the vehicle will turn off and she has to coast to the side of the road. At other times, the vehicle will not turn off and just come to a stop and Complainant can continue driving the vehicle. The problem occurs several times a week and, at least once a week the vehicle will turn off completely leaving her by the side of the road until she is able to restart it.

Complainant also testified that there have been at least two (2) occasions where she was almost involved in accidents due to the system activating unexpectedly. On one occasion, Complainant was driving on the highway and the system activated and the vehicle turned off in the middle of the road. The vehicle was almost rear ended on this occasion. It took about 20 minutes to restart the vehicle. On another occasion the collision avoidance system activated in the rain and the vehicle slid into oncoming traffic and narrowly missed hitting another vehicle head on. Complainant testified that the vehicle slid all the way across the road on that occasion.

Complainant testified that the last time that the collision avoidance system activated for no reason was on October 11, 2021, two (2) days prior to the hearing. On that occasion Complainant was driving the vehicle with her daughter as a passenger when the car came to a stop and the vehicle turned off. Complainant stated that she and her daughter were stranded by the side of the road for about eight (8) minutes as the vehicle would not immediately restart.

²⁴ Respondent Ex. 4, Repair Order dated July 12, 2021.

²⁵ *Id.*

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2. David Newman's Testimony

David Newman, Complainant's ex-husband, testified in the hearing. He stated that he has been in the vehicle when the collision avoidance system activated for no reason. The last time that an incident occurred when he was present was on September 19, 2021. Mr. Newman stated that on that date, he was in the vehicle when the system activated and the brakes activated. In addition, the collision avoidance light illuminated on the vehicle's dashboard. Mr. Newman stated that there was nothing in front of the vehicle to cause the system to activate.

Mr. Newman further testified that he rarely rides in the vehicle but has been present on about five (5) occasions when similar incidents occurred. In addition, he stated that Complainant has asked to borrow his vehicle on at least ten (10) occasions because of Complainant's concerns driving the subject vehicle with her children present.

3. Meagan Arizpe's Testimony

Meagan Arizpe, Complainant's friend, testified for Complainant in the hearing. Ms. Arizpe testified that she frequently rides in the vehicle along with Complainant. She has been in the vehicle on several occasions where the vehicle has stopped abruptly for no reason.

The last time an incident occurred in Ms. Arizpe's presence was approximately two (2) weeks prior to the hearing date. On that occasion, Complainant was driving the vehicle and it came to a complete stop. There was no vehicle in front of them and there was no debris in the road. Ms. Arizpe stated that there was not another vehicle behind them at the time. She stated that the vehicle was stopped for about five (5) to ten (10) minutes before Complainant was able to start it again. Ms. Arizpe stated that she has been present at least four (4) other times when similar incidents occurred.

C. Respondent's Evidence and Arguments

Keaton Tillman, Arbitration Specialist, testified for Respondent. He stated that he has never personally seen the vehicle.

Mr. Tillman stated that Respondent received Complainant's letter dated January 16, 2021, in which she indicated her dissatisfaction with the vehicle. Mr. Tillman testified that Complainant agreed to allow the vehicle to be inspected by Respondent's dealer technical specialist (DTS), Cameron McBride. The inspection took place on August 2, 2021, at Sewell. The vehicle was already at the Sewell location for repair at the time, so it was not necessary for Complainant to make an extra trip to take the vehicle to the dealer. Mr. McBride inspected the vehicle and test

drove it, but was unable to duplicate the issue in the vehicle and did not find any stored DTC's.²⁷ The vehicle's mileage was 20,288 at the time of the inspection.²⁸ No repairs were performed on the vehicle at the time.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

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 collision avoidance system activates for no reason causing the vehicle to stop or slow down when she is driving it.

The evidence presented at the hearing established that there have been several incidents with the vehicle's collision avoidance system activating when there is no danger of a collision. The first-hand testimony provided by Complainant indicates that the problem continues to occur despite several repair attempts by the dealer's service technicians. The last incident prior to the hearing date occurred on October 11, 2021. As such, the hearings examiner must hold that Complainant has met the burden of persuasion to establish the existence of a defect or nonconformity (the vehicle's collision avoidance system activates for no reason) in the subject vehicle. The defect or nonconformity with the vehicle substantially creates a serious safety hazard as defined in Occupations Code § 2301.601(4), as the problem substantially impedes Complainant's ability to control or operate the vehicle for its ordinary use or intended purposes. In addition, the vehicle's market value is adversely affected as it would be difficult to sell the vehicle at market price if there is an issue with collision avoidance system. Also, the vehicle cannot be used for its intended use, as Complainant cannot take it on trips or drive it in certain situations as she cannot be sure that the collision avoidance system will activate and stop the vehicle in traffic for an undetermined amount of time.

²⁷ Respondent Ex. 4, Repair Order dated July 12, 2021.

²⁸ *Id.*

Complainant also presented evidence to indicate that Respondent or its authorized representative was provided with a reasonable number of repair attempts to repair the defect or nonconformity with the vehicle. Complainant presented the vehicle for repair to Respondent's authorized dealer on three (3) separate occasions for the complained of issue prior to the filing of the Lemon Law complaint: November 20, 2020; December 30, 2020; and May 12, 2021. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(2) provides that for a nonconformity that creates a serious safety hazard which continues to exist, a rebuttable assumption that a reasonable number of attempts have been undertaken to conform the motor vehicle to an applicable express warranty 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. In the present case, Complainant has met this test, and, despite the repair attempts, the problem continues to exist. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent and the vehicle has not been repaired.

In addition, the evidence presented at the hearing indicates that Complainant provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainant informed Respondent via letter dated January 16, 2021, of her concerns with the vehicle's collision avoidance system and providing Respondent with an opportunity to cure. Respondent's dealer technical specialist inspected the vehicle on August 2, 2021, was unable to recreate any issues with the vehicle's collision avoidance system and performed no repair to the vehicle.

Although Respondent has been provided adequate opportunity to repair the vehicle and to ensure that it operates properly, they have not been able to repair the vehicle so that it conforms to their written warranty. As such, Complainant has met her burden of persuasion to establish that the vehicle has a warrantable and existing defect or condition which creates a serious safety hazard, and which substantially impairs the use or market value of the vehicle. Therefore, the hearings examiner will order Respondent to repurchase the vehicle as requested by Complainant.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

III. FINDINGS OF FACT

1. Myra Newman (Complainant) purchased a new 2020 Infiniti QX60 on July 16, 2021, from Sewell Infiniti of Fort Worth (Sewell) located in Fort Worth, Texas with mileage of 10 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Nissan North America, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for the first four (4) years or 60,000 miles after delivery, whichever comes first. In addition, Respondent provided a powertrain warranty providing coverage for the vehicle's powertrain for six (6) years or 70,000 miles.
3. The vehicle's mileage on the date of hearing was 24,532.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Complainant has experienced several situations where the vehicle's collision avoidance system has activated for no reason causing the vehicle to come to a stop when she's driving it.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Sewell, in order to address her concerns with the vehicle's collision avoidance system on the following dates:
 - a. November 20, 2020, at 7,700 miles;
 - b. December 30, 2020, at 9,538 miles; and
 - c. May 12, 2021, at 17,174 miles.
7. On November 20, 2020, Sewell's service technician verified the collision avoidance system's warning light was illuminated and replaced the vehicle's radar sensor bracket in order to resolve the issue.
8. On December 30, 2020, Sewell's service technician was unable to duplicate a concern with the vehicle's collision avoidance system activating for no reason and the vehicle stopping as a result.
9. On January 16, 2021, Complainant mailed a letter to Respondent advising them that she was dissatisfied with the vehicle.

10. On May 12, 2021, Sewell's service technician was unable to duplicate a concern with the vehicle's collision avoidance system activating for no reason and the vehicle stopping as a result.
11. On May 15, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On July 12, 2021, Complainant took the vehicle to Sewell for repair for the issue with the collision avoidance system activating for no reason. The vehicle's mileage was 20,288 at the time.
13. While the vehicle was at Sewell for repair, Respondent's dealer technical specialist (DTS), Cameron McBride, inspected the vehicle.
14. Mr. McBride's inspection was performed on August 2, 2021.
15. During the inspection described in Findings of Fact #13, Mr. McBride could not duplicate the concern, nor did he find any diagnostic codes stored on the vehicle's computers. No repair was performed at the time.
16. On October 11, 2021, prior to the hearing date, Complainant last experienced an incident where the vehicle's collision avoidance system activated for no reason and the vehicle stopped.
17. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$51,619.80
Delivery mileage	10
Mileage at first report of defective condition	7,700
Mileage on hearing date	24,532
Useful life determination	120,000

Purchase price, including tax, title, license and registration						\$51,619.80
Mileage at first report of defective condition						7,700
Less mileage at delivery						<u>-10</u>
Unimpaired miles						7,690
Mileage on hearing date						24,532
Less mileage at first report of defective condition						<u>-7,700</u>
Impaired miles						16,832
Reasonable Allowance for Use Calculations:						
Unimpaired miles						
						<u>7,690</u>
	120,000	X	\$51,619.80		=	\$3,307.97
Impaired miles						
						<u>16,832</u>
	120,000	X	\$51,619.80	X .5	=	<u>\$3,620.27</u>
Total reasonable allowance for use deduction:						\$6,928.24
Purchase price, including tax, title, license and registration						\$51,619.80
Less reasonable allowance for use deduction						-\$6,928.24
Plus filing fee refund						<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT						\$44,726.56

18. On August 9, 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.
19. The hearing in this case convened on October 13, 2021, in Carrollton, Texas before Hearings Examiner Edward Sandoval. Myra Newman, Complainant, appeared and represented herself in the hearing. Also appearing and testifying for Complainant was her ex-husband, David Newman, and a friend, Meagan Arizpe. Respondent, Nissan North America, Inc., was represented by Keaton Tillman, Arbitration Specialist. The hearing record closed on October 13, 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's vehicle has an existing defect or condition (the collision avoidance system activates for no reason) that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle has an existing defect or condition (the collision avoidance system activates for no reason) that substantially impairs Complainant's use or market value of the vehicle. Tex. Occ. Code § 2301.604(a).
8. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
9. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief and repurchase of the 2020 Infiniti QX60 under Texas Occupations Code § 2301.604(a).

IT IS THEREFORE ORDERED that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear

and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;

2. Respondent shall repurchase the subject vehicle in the amount of **\$44,726.56**. (This total includes the \$35.00 Lemon Law filing fee.) The total refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent, Nissan North America, Inc., shall repair the warrantable defect (the vehicle's collision avoidance system activating for no reason) in the reacquired vehicle identified in this Decision.

SIGNED October 25, 2021.



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