

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0011795 CAF**

**SILVIA AND ZULLY FALS,  
Complainants**

**v.**

**NISSAN NORTH AMERICA,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Silvia and Zully Fals (Complainants) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their new 2020 Nissan Versa. Complainants assert that the vehicle hesitates on acceleration and lacks power on acceleration. Nissan North America (Respondent) argued that the issue is not a serious safety defect, nor does it substantially impair the use or market value of the vehicle and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainants are eligible for 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 November 16, 2021. The hearing was conducted before Hearings Examiner Edward Sandoval in Odessa, Texas at the Department of Transportation district office. Complainants, Silvia and Zully Fals, were present and testified in the hearing. Respondent was represented telephonically by Keaton Tillman, Arbitration Specialist. The hearing was continued to allow for an interpreter for Zully Fals to be present. The hearing reconvened on Microsoft Teams before Hearings Examiner Edward Sandoval on February 4, 2022. Complainants, Silvia and Zully Fals, were present and testified in the hearing. Respondent was represented telephonically by Keaton Tillman. Yolanda Badilla provided Spanish interpretive services for the hearing. The record closed on February 4, 2022.

**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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

“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.<sup>8</sup>

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.<sup>9</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.601(4).

<sup>9</sup> 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.<sup>10</sup>

## **B. Complainants' Evidence and Arguments**

Complainants purchased a new 2020 Nissan Versa (the vehicle) from Mossy Nissan (Mossy) in Houston, Texas on October 16, 2020.<sup>11</sup> The vehicle's mileage was 17 at the time of the purchase.<sup>12</sup> Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle covering the powertrain for five (5) years or 60,000 miles. At the time of the initial hearing, the vehicle's mileage was 40,975. The bumper-to-bumper warranty had expired, but Respondent's powertrain warranty for the vehicle was still in effect on the hearing date.

Silvia Fals testified at the initial hearing on November 16, 2021. She stated that she drives the vehicle once or twice a month and Zully Fals is the primary driver of the vehicle and drives it daily.

Silvia Fals testified that she took a test drive in the vehicle prior to purchase and did not notice any issue with the vehicle. She stated that she first noticed acceleration issues with the vehicle around the beginning of 2021 on a trip from Odessa to Midland. She explained that she and Zully Fals ignored the issue at first until around April when it got worse. She stated she most recently noticed the issue the week before the hearing. Ms. Fals indicated that the issue occurs randomly but is more forceful on longer drives. She estimated that the issue occurs around 5 times a day.

Zully Fals testified in the continued hearing conducted on February 4, 2022. She stated that she is the primary driver of the vehicle. Ms. Fals was present for the test drive of the vehicle and did not notice any issues with the vehicle at the time. She estimated that she first noticed the vehicle failing to accelerate around January of 2021. Ms. Fals stated that the vehicle would sometimes take a while to accelerate from a stop. She pointed out that the issue was intermittent. Ms. Fals testified that on April 11, 2021, the vehicle did not accelerate when she shifted the transmission into drive. She took the vehicle to Nissan of Midland (Midland) located in Midland, Texas for repair on that day and they told her they would not be able to see the vehicle until the next day.

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<sup>10</sup> Tex. Occ. Code § 2301.605(c).

<sup>11</sup> Complainant Ex. 3, Retail Purchase Agreement dated October 16, 2020.

<sup>12</sup> Complainant Ex. 4, Odometer Disclosure Statement dated October 16, 2020.

On April 12, 2021, Ms. Fals informed Midland's service representatives of the acceleration issues with the vehicle. Midland's service technician replaced the vehicle's CVT in order to correct the issue.<sup>13</sup> The vehicle's mileage at this time was 22,657.<sup>14</sup> The vehicle was in Midland's possession until April 22, 2021.<sup>15</sup> Ms. Fals stated that she did not receive a loaner vehicle during the repair. She claimed that the vehicle did not drive well when she picked it up. She stated it had a loud sound and it was not driving correctly.

On April 26, 2021, Ms. Fals returned the vehicle to Midland for repair since she felt that it was not driving properly. Midland's technician did not find any issues with the vehicle and did not make any repairs at the time.<sup>16</sup> The vehicle's mileage at this time was 23,062.<sup>17</sup> The vehicle was returned to Ms. Fals the same day and she did not receive a loaner vehicle during the repair visit.

After receiving the vehicle back from the dealer, Ms. Fals continued to hear abnormal noises from the vehicle when driving it and noticed that it was not accelerating properly. The next day, on April 27, 2021, she returned the vehicle to Midland for repair for the issues. Ms. Fals went on a test drive with a service technician to show him what she was experiencing. Ms. Fals testified that she was asked to leave the vehicle with the dealer so that they could try to repair it properly. However, no repairs were performed on the vehicle.<sup>18</sup> The vehicle's mileage at this time was 23,154.<sup>19</sup> The vehicle was in the shop for nine (9) days and Ms. Fals was not provided a loaner vehicle. She testified that the vehicle drove properly for 15 days after she picked it up from the dealer, until the lack of acceleration issue returned and the check engine light (CEL) illuminated.

Ms. Fals took the vehicle to Mossy for repair for the CEL illuminating and the lack of acceleration on May 24, 2021. Mossy's service technician replaced the vehicle's mass airflow (MAF) sensor and performed an idle volume relearn.<sup>20</sup> The vehicle's mileage at the time was 26,116 miles.<sup>21</sup> The vehicle was in Mossy's possession for two (2) days and Ms. Fals did not receive a loaner vehicle. She stated that the vehicle drove fine the day she picked it up, but the acceleration issue returned the next day.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 24, 2021.<sup>22</sup> Ms. Fals testified that Complainants mailed a notice to Respondent that they were dissatisfied with the vehicle on or around May 25, 2021.<sup>23</sup>

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<sup>13</sup> Complainant Ex. 5, Repair Order dated April 12, 2021.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Respondent Ex. 1, Repair Order dated April 26, 2021.

<sup>17</sup> *Id.*

<sup>18</sup> Respondent Ex. 2, Repair Order dated April 27, 2021.

<sup>19</sup> *Id.*

<sup>20</sup> Complainant Ex. 6, Repair Order dated May 24, 2021.

<sup>21</sup> *Id.*

<sup>22</sup> Complainant Ex. 1, Lemon Law Complaint dated May 24, 2021.

<sup>23</sup> Complainant Ex. 10, Letter to Nissan North America undated.

Ms. Fals returned the vehicle to Mossy for repair for the lack of acceleration issue on May 27, 2021. Mossy's service technician reprogramed the vehicle's transmission control module (TCM) and replaced the engine air filter.<sup>24</sup> The vehicle's mileage was 26,241 at the time.<sup>25</sup> The technicians did not notice any issues on a test drive. The vehicle was in Mossy's possession for ten (10) days and Ms. Fals was not provided a loaner vehicle. Ms. Fals returned to Midland after the repair and during the drive the acceleration issues returned.

On June 18, 2021, Ms. Fals returned the vehicle to Mossy for repair for the lack of acceleration issue. Mossy's service technician test drove the vehicle and duplicated the issue.<sup>26</sup> The technician checked the vehicle's computers for diagnostic trouble codes (DTCs) and no codes were found.<sup>27</sup> The technician test drove the vehicle again and the issue did not present itself again.<sup>28</sup> No repair was performed at this time.<sup>29</sup> The vehicle's mileage was 27,258 at the time.<sup>30</sup> The vehicle was in the dealer's possession for ten (10) days and Ms. Fals was not provided a loaner vehicle.

Ms. Fals took the vehicle back to Mossy for repair for the lack of acceleration issue on August 30, 2021. Mossy's service technician replaced the vehicle's MAF sensor in an attempt to resolve the issue.<sup>31</sup> The vehicle's mileage at the time was 33,737 miles.<sup>32</sup> The vehicle was in Mossy's possession for nine (9) days and Ms. Fals was not provided a loaner vehicle. The lack of acceleration issue arose again when she returned to Midland.

Ms. Fals took the vehicle to Midland for repair on October 18, 2021 because the vehicle died and would not start. The service technicians did not check the vehicle on this visit. Ms. Fals stated that this was the only time there was an issue with the vehicle not starting, but the acceleration issues remained after that date.

On January 25, 2022, Ms. Fals took the vehicle to the Midland dealership so that Respondent's representative could inspect the vehicle. During this visit, the inspector found a DTC on the vehicle's computers and determined that the transmission needed replacement. However, repairs could not be performed at that time, as parts necessary for the repair had to be ordered. Midland was in possession of the vehicle for one (1) day and Ms. Fals was provided with a loaner vehicle during this visit.

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<sup>24</sup> Complainant Ex. 7, Repair Order dated May 27, 2021.

<sup>25</sup> *Id.*

<sup>26</sup> Complainant Ex. 8, Repair Order dated June 18, 2021.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Complainant Ex. 9, Repair Order dated August 30, 2021.

<sup>32</sup> *Id.*

As of the date of hearing the vehicle was still experiencing acceleration issues. Ms. Fals testified that she most recently noticed the issue the day before the hearing. She explained that she experienced the issue while stopped at a light and the vehicle would not move forward when she tried to accelerate.

#### **D. Respondent's Evidence and Arguments**

Keaton Tillman, Arbitration Specialist, testified for Respondent. Mr. Tillman confirmed that he has never personally seen the vehicle. He stated that he arranged the January 25, 2022 dealer technical specialist's (DTS's) inspection of the vehicle after the hearing was initially continued. He stated that the inspection took place on January 25, 2022 at Nissan of Midland. The DTS found an internal issue in the transmission and determined that the CVT assembly needed to be replaced. Mr. Tillman stated the parts were ordered but a repair had not performed as of the date of the continued hearing.

Mr. Tillman stated Respondent received the written notice from Complainants on August 12, 2021. He stated that Respondent's technical representative did not inspect the car in person until January of 2022, but the technical representative did assist virtually in repairs performed in August of 2021.

#### **E. Analysis**

Under the Lemon Law, Complainants bear 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, Complainants must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainants are required to serve written notice of the 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, Complainants are entitled to have the vehicle repurchased or replaced.

The first issue to address is whether Complainants' vehicle has a defect or condition that substantially impairs its use or market value, or which creates a serious safety hazard. The totality of the evidence presented at the hearing reveals that the vehicle hesitates when accelerating and that the issue has not been repaired. It is apparent from the testimony presented that the vehicle does have a defect or nonconformity which affects its use and market value, as a potential buyer would be more hesitant to purchase a vehicle that does not accelerate properly.

Complainants 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. Complainants presented the vehicle for repair for the hesitation issue to Respondent's authorized representatives on several occasions: April 12, 2021; April 26, 2021; April 27, 2021; May 24, 2021; May 27, 2021; June 18, 2021; August 30, 2021; and October 18,

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) specifies that a rebuttable presumption that a reasonable number of attempts to repair have been made to repair a serious safety hazard 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” The evidence presented at the hearing establishes that Complainants have met the requirements of this test since they took the vehicle for repair the requisite number of times within the specified time frame. As such, Complainants have established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainants also provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainants informed Respondent via letter, which Respondent received on August 12, 2021, of the issue with the vehicle hesitating when accelerating and providing them with an opportunity to cure. Respondent’s dealer technical specialist inspected the vehicle on January 25, 2022 and determined that the vehicle’s CVT assembly should be replaced. No repairs were performed at the time because parts had to be ordered. As of the date of hearing (February 4, 2022), the vehicle had not been repaired.

Although Respondent has been provided several opportunities 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, Complainants have met their burden of proof to establish that the vehicle has a warrantable and existing defect or condition which substantially impairs the vehicle’s use and market value.

Based on the evidence and the arguments presented, the hearings examiner finds that replacement of the vehicle is the appropriate remedy in this case. Complainants’ request for replacement relief is hereby granted.

### **III. FINDINGS OF FACT**

1. Zully and Silvia Fals (Complainants) purchased a new 2020 Nissan Versa (the vehicle) from Mossy Nissan (Mossy) in Houston, Texas on October 16, 2020, with mileage of 17 at the time of delivery.
2. The manufacturer of the vehicle, Nissan North America (Respondent), issued a bumper-to-bumper warranty for the vehicle providing coverage for three (3) years or 36,000 miles,

whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle 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 initial hearing was 40,975.
4. At the time of hearing the powertrain warranty for the vehicle was still in effect.
5. Complainants first experienced a problem with the vehicle around the beginning of 2021 when the vehicle began to hesitate on acceleration.
6. Complainants' vehicle was serviced by Respondent's authorized dealers, Mossy and Nissan of Midland (Midland) located in Midland, Texas, on the following dates because of Complainants' concerns with the vehicle's hesitation when accelerating:
  - a. April 12, 2021, at 22,657 miles;
  - b. April 26, 2021, at 23,062 miles;
  - c. April 27, 2021, at 23,154 miles;
  - d. May 24, 2021, at 26,116 miles;
  - e. May 27, 2021, at 26,241 miles;
  - f. June 18, 2021, at 27,258 miles;
  - g. August 30, 2021, at 33,737 miles; and
  - h. October 18, 2021, at unknown miles.
7. On April 12, 2021, Midland's service technicians replaced the vehicle's continuously variable transmission (CVT) assembly in order to resolve the issue of the vehicle hesitating upon acceleration.
8. On April 26, 2021, Midland's service technician did not find any issues with the vehicle and did not make any repairs.
9. On April 27, 2021, Midland's service technician test drove the vehicle with Ms. Fals and did not notice any issues. No repairs were made on this visit.
10. On May 24, 2021, Mossy's service technician replaced the vehicle's mass airflow sensor (MAF) in an attempt to resolve the check engine light illuminating (CEL) and acceleration issues.
11. On May 24, 2021, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On May 27, 2021, Mossy's service technicians reprogrammed the transmission control module (TCM) and replaced the engine air filter.



13. On June 18, 2021, Mossy's service technician was initially able to duplicate the loss of power issue but did not find any diagnostic trouble codes (DTCs) on the vehicle's computers and no repairs were made to the vehicle.
14. In August of 2021, Complainants mailed written notice to Respondent of Complainants' dissatisfaction with the vehicle.
15. On August 30, 2021, Mossy's service technicians replaced the vehicle's MAF sensor to resolve the lack of acceleration issue.
16. On October 18, 2021, Midland's service technicians did not perform any repairs for the acceleration issue because the vehicle was brought in because it had died and would not turn on.
17. On January 25, 2022, Respondent's dealer technical specialist (DTS) inspected the vehicle at the Midland dealership.
18. The DTS found stored DTCs on the vehicle's computers and determined that the CVT assembly should be replaced. No repair was performed at the time, as parts had to be ordered for the vehicle.
19. The vehicle was still consistently hesitating upon acceleration at the time of hearing.
20. On September 10, 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.
21. The hearing in this case convened on November 16, 2021. The hearing was conducted before Hearings Examiner Edward Sandoval in Odessa, Texas at the Department of Transportation district office. Complainants, Silvia and Zully Fals, were present and testified in the hearing. Respondent was represented telephonically by Keaton Tillman, Arbitration Specialist. The hearing was continued to allow for an interpreter for Zully Fals to be present. The hearing reconvened on Microsoft Teams before Hearings Examiner Edward Sandoval on February 4, 2022. Complainants, Silvia and Zully Fals, were present and testified in the hearing. Respondent was represented telephonically by Keaton Tillman. Yolanda Badilla provided Spanish interpretive services for the hearing. The record closed on February 4, 2022.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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. Complainants 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. Complainants bear the burden of proof in this matter.
6. Complainants' vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle, *i.e.*, the vehicle's hesitation upon acceleration. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformities in Complainants' vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainants are entitled to relief and replacement of their 2020 Nissan Versa under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

1. Respondent shall, in accordance with Texas Administrative Code § 215.208(d)(1)(A), promptly authorize the exchange of Complainants' new 2020 Nissan Versa (the reacquired vehicle) with Complainants' choice of any comparable motor vehicle.
2. Respondent shall instruct the dealer to contract the sale of the selected comparable vehicle with Complainants under the following terms:
  - (a) The sales price of the comparable vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);

- (b) The trade-in value of Complainants' 2020 Nissan Versa shall be the MSRP at the time of the original transaction, less a reasonable allowance for Complainants' use of the vehicle;
  - (c) The use allowance for replacement relief shall be calculated in accordance with the formula outlined in Texas Administrative Code § 215.208(b)(2) (the use allowance is \$5,350.56);
  - (d) The use allowance paid by Complainants to Respondent shall be reduced by \$35.00 (the refund for the filing fee) (after deducting the filing fee, the use allowance is reduced to **\$5,325.56**);
- 3. Respondent's communications with Complainants finalizing replacement of the reacquired vehicle shall be reduced to writing, and a copy thereof shall be provided to the Department within twenty (20) days of completion of the replacement.
  - 4. Respondent shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department.<sup>33</sup>
  - 5. Respondent shall affix the disclosure label to the reacquired vehicle in a conspicuous location (e.g., hanging from the rear view mirror). Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
  - 6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.
  - 7. Respondent shall repair the defect or condition that was the basis of the 2020 Nissan Versa's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.
  - 8. Upon replacement of Complainants' 2020 Nissan Versa, Complainants shall be responsible for payment or financing of the usage allowance of the reacquired vehicle, any outstanding liens on the reacquired vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees. Further, in accordance with 43 Tex. Administrative Code § 215.208(d)(2):

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<sup>33</sup> Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.

- (a) If the comparable vehicle has a higher MSRP than the reacquired vehicle, Complainants shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs to the manufacturer, converter or distributor; and
  - (b) If the comparable vehicle has a lower MSRP than the reacquired vehicle, Complainants will be credited the difference in the MSRP between the two vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the reacquired vehicle.
- 9. Complainants shall be responsible for obtaining financing, if necessary, to complete the transaction.
- 9. The replacement transaction described in this Order shall be completed within 20 calendar days from the receipt of this Order. If the transaction cannot be accomplished within the ordered time period, Respondent shall repurchase Complainants' 2020 Nissan Versa pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be **\$14,87.85**. The refund shall be paid to Complainants and the lien holder, if any, as their interests appear. If clear title is delivered, the full refund shall be paid to Complainants.

Purchase price, including tax, title, license and registration	\$20,191.41
Delivery mileage	17
Mileage at first report of defective condition	22,657
Mileage on hearing date	40,975
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$20,191.41				
Mileage at first report of defective condition	22,657				
Less mileage at delivery	<u>-17</u>				
Unimpaired miles	22,640				
Mileage on hearing date	40,975				
Less mileage at first report of defective condition	<u>-22,657</u>				
Impaired miles	18,318				
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
	<u>22,640</u>				
	120,000	X	\$20,191.41	=	\$3,809.45
Impaired miles					
	<u>18,318</u>				
	120,000	X	\$20,191.41	X .5	= <u>\$1,541.11</u>
Total reasonable allowance for use deduction:					\$5,350.56
Purchase price, including tax, title, license and registration	\$20,191.41				
Less reasonable allowance for use deduction	-\$5,350.56				
Plus filing fee refund	<u>\$35.00</u>				
<b>TOTAL REPURCHASE AMOUNT</b>	<b>\$14,875.85</b>				

11. If Complainants' 2020 Nissan Versa is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of Respondent's reacquisition of the vehicle, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the trade-in value of Complainant's vehicle.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defects in the reacquired vehicle (the vehicle hesitating upon acceleration) identified in this Decision.

**SIGNED February 24, 2022**

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

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