

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0013550 CAF**

**EMMANUELLE ZALAC and RYAN
OSUNA,**

Complainants

v.

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

Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Emmanuelle Zalac and Ryan Osuna (Complainants) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in their vehicle distributed by Jaguar Land Rover North America, LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened by videoconference on March 3, 2022, before Hearings Examiner Andrew Kang, and the record closed on March 14, 2021. Emmanuelle Zalac represented the Complainants. John Chambless, attorney, represented the Respondent. Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.² A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”³ In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must currently exist after a “reasonable number of attempts” at repair.⁴ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life-threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁵

b. Substantial Impairment of Use or Value

i. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use. Under this standard, the factfinder considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle” from the perspective of a reasonable prospective purchaser. For instance, “while a vehicle with a non-functioning air

² TEX. OCC. CODE § 2301.603.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁶

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁷

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000

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

⁷ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

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

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

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.¹⁰

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹¹

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹² Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹³

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity to the respondent;¹⁴ (2) the respondent was given an opportunity to cure the defect or

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(c).

¹² *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

¹³ *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹⁴ 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

nonconformity;¹⁵ and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁶

2. Warranty Repair Relief

If repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle”; the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty's expiration; and the owner filed a complaint with the Department specifying the defect.¹⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁸

3. Burden of Proof

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

¹⁵ TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent authorizes a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

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

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 215.66(d).

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

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²¹ The complaint must state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”²² However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainants for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁶ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the Complainants retain counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts

²¹ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” TEX. GOV’T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

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

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

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

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

²⁶ TEX. OCC. CODE § 2301.604.

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

B. Summary of Complainants' Evidence and Arguments

On February 15, 2021, the Complainants, purchased a used 2019 Land Rover Discovery from Land Rover Jaguar of Austin, a franchised dealer of the Respondent, in Austin, Texas. The vehicle had 9,010 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.

On June 29, 2021, the Complainants filed a complaint with the Department alleging that the windshield leaked, the stereo system glitched, the screen would go black, the connection to the phone would be intermittent, and the charging ports would work off and on. On or about July 2, 2021, the Department provided a written notice of the complaint to the Respondent.

In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

| Date | Miles | Issue |
|-------------|--------------|---|
| 03/03/2021 | 9,300 | The windshield was leaking. |
| 06/05/2021 | 10,000 | The USB ports and stereo were not working properly. |

Ms. Zalac informed the hearing examiner that the stereo had been partially repaired. She explained that the stereo turned on but it would cut out intermittently. She further explained that the screen would go black occasionally and the phone would cut in and out. She added that the windshield leak had been repaired.

She described the issues with the infotainment system, stating that when the phone was plugged in to CarPlay, the system will randomly switch to radio and then randomly switch back to CarPlay. She added that there are also times where the entire infotainment system would go black. She testified that the screen blacking out happens weekly but less frequently than the phone connection issue. She guessed that the screen blacking out could be related to the volume of the stereo but she was unsure.

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

She explained that the phone connectivity issue occurred weekly or bi-weekly. She noted that there was no reason for the issue, but when it happened, it did not stop. She described that the system did not recognize the phone as connected whatsoever. She stated that the system would cut in for a few seconds and then go back to radio repeatedly unless she unplugged the phone. She pointed out that she used a wired connection for Car Play and she did not have her phone connected with Bluetooth. She estimated that she last noticed the issue a week or two before the hearing.

She confirmed that there was an issue with the USB port and not the 12v outlet. She noted that she had never used the 12v outlet. She believed that the phone was still charging when it disconnected from CarPlay. She noted that the charging port issue and the phone connection issue were the same issue.

She testified that she informed the dealership about the issue with the stereo and phone connection but that she was not certain that the dealer made any repair attempts. She recalled that she took the vehicle in to the dealer for repairs with the windshield soon after she bought the car and the dealer had the vehicle for 4 months and she got the vehicle back in June 2021. She indicated that someone at the dealership damaged the vehicle when fixing the windshield, so that none of the USB ports worked. She stated that she took the vehicle back into the dealership, which kept it for another four months before it was returned on September 20, 2021. She acknowledged that the USB ports were working before the windshield repair. The vehicle's odometer read 21,664 miles at the time of the hearing.

On cross-examination, Ms. Zalac indicated that Ryan Osuna drove the vehicle most often when he drove to work. She noted that the most recent time she drove the vehicle was the morning of the hearing. She admitted that she normally did not drive the vehicle more than a few times a month. She explained that she owned several other cars for use on Turo (a car sharing service), but the vehicle in question was never used on Turo.

She testified that her vehicle was not working for a nine-month period even though it was only in the dealership for five months. She explained that she did not have the same phone over the period that the car had been having issues. She further explained that she works for Apple and changed her phone three times since March 2021. She added that she also tried different apple certified cords. She stated that she has had her current phone for three months. She described that the current phone is an iPhone 13 Pro Max running on version 15.3.1 of the iPhone operating

system. She clarified that when the CarPlay stopped, the phone still charged. She added that she rarely used the Bluetooth in the vehicle. She admitted that she had only spent a little bit of time at the dealership with her phone and the cord.

Ms. Zalac clarified that the dents in the front of the vehicle were present when she bought the vehicle but she was unaware of the bumper damage. She claimed that she was unaware of any accidents or insurance claims involving the vehicle.

She admitted that she had not read the entire owner's manual but she did read sections of it. She explained that there were two ports and only one that communicated with the car. She noted that the other USB port still charged a phone.

C. Summary of Respondent's Evidence and Arguments

Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for the Respondent. Mr. Sangster described his experience including being an automotive instructor, ASE certification and experience working with multiple auto companies.

He established that he inspected the vehicle the Monday before the hearing. He testified that he tested the windshield of the vehicle for leaks and he did not find any. He explained that he tested both ports on the vehicle and they were both operational and worked with CarPlay. He noted that he drove the vehicle for a total of 40 miles. He claimed that he did not experience any screen issues. He stated that he found a DTC for the screen going blank from June 20, 2021 and that was the most recent DTC for the screen.

He explained that CarPlay was a third-party system so the vehicle had to have software that was compatible with that. He further explained that the Apple system updated frequently so the vehicle's system had to update frequently. He added that there was also the hardware component of the cords and the phone itself that also interact with the system. He confirmed that all the additional software and hardware were not JLRNA products.

He additionally stated that the five-month delay while the vehicle was at the dealership was for a wiring harness ordered to repair the USB system. He explained that the wiring harness ran between the USB port and the infotainment system. He concluded that he did not believe there was a substantial defect with the vehicle and the vehicle was operating as designed.

D. Analysis

As an initial matter, as explained in the discussion of applicable law, Lemon Law, relief does not apply to used vehicles. Nevertheless, a used vehicle may still qualify for repair relief under the Warranty Performance Law. To qualify for warranty repair relief, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect) that continues to exist.²⁹ The Lemon Law does not require that a respondent provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the respondent to conform its vehicles to whatever coverage the warranty provides. In part, the warranty generally states that:

JLRNA warrants that during the warranty period, if a Land Rover vehicle is properly operated and maintained, repairs required to correct defects in factory-supplied materials or factory workmanship will be performed without charge upon presentment for service at an authorized Land Rover retailer; any component covered by this warranty found to be defective in materials or workmanship will be repaired, or replaced, without charge with a new or remanufactured part distributed by JLRNA at its sole option.³⁰

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³¹ A defectively manufactured vehicle has a flaw because of some error in manufacturing it at the factory, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics (which exist before manufacturing) or improper dealer repairs (which occur after manufacturing) are not warrantable manufacturing defects. Design characteristics and design defects result from the vehicle's specified design, which exists before manufacturing, and not from

²⁹ TEX. OCC. CODE § 2301.204.

³⁰ Complainant's Ex. 2, Passport to Service, New Vehicle Limited Warranty.

³¹ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

any error during manufacturing.³² Because the warranty only covers manufacturing defects, any non-manufacturing problems do not qualify for relief.

1. Windshield

Ms. Zalac confirmed that the windshield had been successfully, thereby resolving this issue.

2. USB Ports

The problem with the USB ports, which encompasses the phone connectivity and charging issues, appears to result from an improper repair by the dealer and not from a manufacturing defect. The evidence shows that the USB ports functioned prior to the dealer's repair of the windshield, during which the dealer apparently damaged the vehicle, causing the problem with the USB ports. As explained previously, an improper dealer repair is not a manufacturing defect that qualifies for any relief.

3. Stereo/Infotainment System

The record reflects that the stereo/infotainment system have a currently existing defect. Specifically, the infotainment system screen has continued to go blank about weekly. The issue occurred with different phones and both with and without a phone connected, indicating an issue with the vehicle as opposed to the phone. Accordingly, the vehicle qualifies for warranty repair relief.

III. Findings of Fact

1. On February 15, 2021, the Complainants, purchased a used 2019 Land Rover Discovery from Land Rover Jaguar of Austin, a franchised/authorized dealer of the Respondent, in Austin, Texas. The vehicle had 9010 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.
3. The Complainants took the vehicle to a dealer for repair as shown below:

³² In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

| Date | Miles | Issue |
|------------|--------|---|
| 03/03/2021 | 9,300 | The windshield was leaking. |
| 06/05/2021 | 10,000 | The USB ports and stereo were not working properly. |

4. On June 29, 2021, the Complainants filed a complaint with the Department alleging that the windshield leaked, the stereo system glitched, the screen would go black, the connection to the phone would be intermittent, and the charging ports would work off and on.
5. On or about July 2, 2021, the Department provided a written notice of the complaint to the Respondent.
6. On September 24, 2021, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the factual matters asserted.
7. The hearing in this case convened by videoconference on March 3, 2022, before Hearings Examiner Andrew Kang, and the record closed on March 14, 2021. Emmanuelle Zalac represented the Complainants. John Chambless, attorney, represented the Respondent. Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for the Respondent.
8. The vehicle's odometer displayed 21,664 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing.
10. The record reflects that the stereo/infotainment system screen has continued to go blank about weekly. The issue occurred with different phones and occurred both with and without a phone connected.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.

2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainants filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants' vehicle does not qualify for replacement or repurchase. Replacement and repurchase relief only apply to new vehicles. TEX. OCC. CODE § 2301.603.
7. The Complainants do not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. If the Complainants' vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
9. The Complainants' vehicle qualifies for warranty repair. The Complainants proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainants or an agent of the Complainants notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
10. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, the Respondent shall resolve the issue with the infotainment/stereo screen turning blank. Upon this Order becoming final under Texas Government Code § 2001.144:³³ (1) the Complainants shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **20 days** after receiving it. However, if the Department determines the Complainants' refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainants to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED May 16, 2022



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

³³ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.