

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0006311 CAF**

IMTIAZ AHMED and RIFAT KARIM,	§	BEFORE THE OFFICE
Complainants	§	
	§	
v.	§	OF
	§	
KIA MOTORS AMERICA, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Imtiaz Ahmed and Rifat Karim (Complainants) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in their vehicle distributed by Kia Motors America, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the vehicle’s use or market value. Consequently, the Complainants’ vehicle does not qualify for repurchase/replacement. However, the vehicle has a 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 on Friday, June 10, 2022, in New Braunfels, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Gerrit Schulze, attorney, represented the Complainants. Danielle Gaynair, Escalated Case Administrator, represented 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); see *Vance v. My Apartment Steak House, Inc.*, 677 S.W.2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim for relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

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 complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts

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 August 2, 2021, the Complainants purchased a new 2022 Kia Telluride from Ancira Kia, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 10 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for 60 months or 60,000 miles, whichever occurs first.

On or about August 11, 2021, the Complainants provided a written notice of defect to the Respondent. On January 17, 2022, the Complainants filed a complaint with the Department alleging that the subject vehicle's steering column obtrusively vibrates when driving at highway speeds. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
08/03/2021	115	Obtrusive vibration in steering wheel, front tires, internal fixtures, and steering column initially at highway speeds but later at lower speeds, too.
08/06/2021	277	Same as above.
08/09/2021	631	Same as above.
09/13/2021	2,533	Same as above.
11/11/2021	5,188	Same as above.
12/14/2021	5,950	Same as above.

Each time Complainants took the vehicle in for repair, they complained about the same issue: an obtrusive vibration felt mainly in the steering column that would occur when driving more than 70 miles per hour, and later more than 65 miles per hour.

The Complainants testified that the dealership did not allow them to perform a test drive. According to them, they first noticed the obtrusive vibration on the drive home that day, the first time they drove the vehicle at highway speeds. A day later, on August 3, 2021, the Complainants contacted the dealership to report the issue. The dealership adjusted the tire pressure and torqued the wheels. The service invoice states that they test drove the vehicle at 20 miles per hour and

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

could not feel vibrations. The odometer read the same mileage at the end of the inspection as it did when the Complainants brought the vehicle in. As the Complainants suggested, this indicates that the dealership did not test drive more than a mile.

After that August 3rd inspection, the issue persisted, so the Complainants took the vehicle back in on August 6, 2021. Once again, the dealership balanced and rotated the tires and checked the torque on the half shafts. They found two tires out of balance. The invoice states that they test drove after repair, and again, the mileage was the same in and out.

Complainants returned on August 9, 2021 with the same complaints. This time, the dealer kept the vehicle for ten days. The invoice reflects that they balanced and rotated the tires, test drove another vehicle of the same model, which the dealer stated operated the same as the subject vehicle. The dealer ultimately determined that there was nothing otherwise defective about the vehicle. The mileage was the same in and out.

The vehicle was again left with the dealer September 13, 2021 through September 24, 2021. This time, Complainants reported that the obtrusive vibration was felt at 65 miles per hour. The dealership tested tire pressure. Again, the invoice reflects that the staff conducted test drives of the subject vehicle and another similar vehicle. Again, the mileage was the same in and out.

November 11, 2022 through November 24, 2022. The invoice reflects that the subject vehicle was test driven, and the service staff noticed the vibration. They balanced all four tires and ordered and installed two new tires. When the vibration persisted, they ordered a new driveshaft and coupler. Complainants were advised to pick up the vehicle until the parts arrived, and they were provided a rental vehicle while they waited.

On December 14, 2021, Complainants brought the vehicle in to replace the propeller rear shaft assembly and coupling assembly. The December 14, 2021 visit was the last time the Complainants brought the subject vehicle in for repairs. After this replacement, the Complainants contended that the problem has persisted.

C. Inspection

At the time of hearing, the odometer displayed 18,471 miles. Mr. Ahmed stated during the drive that the weight of the vehicle affected the feel of the vibration, i.e., the lighter the load, the more noticeable the vibration. He also stated that the vibration did not differ whether accelerating

or cruising. Vibration due to the road's surface would obscure the complained of vibration. At the end of the test drive, the odometer displayed 18,502 miles.

D. Summary of Respondent's Evidence and Arguments

The Respondent did not dispute that the existence of the vibration. Instead, the Respondent contended that the Complainants did not comply with notice requirements under the warranty and did not allow a final repair attempt. Ms. Gaynair testified that once the Respondent received notice of the complaint filed with the Department, they requested to perform a final repair attempt, which the Complainants did not grant. On cross-examination, Ms. Gaynair acknowledged that there was no substantive difference between the proposed repair and the repairs that occurred before the Complainants filed a complaint with the Department.

E. Analysis

A preponderance of the evidence shows the Complainants are not entitled to Lemon Law relief. As explained in the discussion of applicable law, the law requires the Complainant to prove every element under the Lemon Law, or Warranty Performance Law for repair relief, by a preponderance. In other words, the Complainant must prove that every required fact is more likely than not true. Here, a preponderance of the evidence does not show the vehicle has a substantial impairment or serious safety hazard. In sum, the vehicle does not qualify for repurchase/replacement, but does qualify for repair relief.

In the present case, the parties do not dispute that the complained of vibration exists. Rather, the Respondent argues that the Complainants did not comply with the warranty's notice requirements and did not allow a final repair attempt. However, the Lemon Law does not require a complainant to follow any procedures in the warranty as a condition for a remedy under the Lemon Law.²⁹ Though the warranty determines what constitutes a warrantable defect, the Lemon Law has its own requirements for relief, independent of any requirements in the warranty itself.

²⁹ TEX. OCC. CODE §§ 2301.607(g) ("A contractual provision that excludes or modifies a remedy provided by this subchapter is prohibited and is void as against public policy unless the exclusion or modification is made under a settlement agreement between the owner and the manufacturer, converter, or distributor.").

1. Warrantable Defect

As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect)³⁰ that continues to exist, even after repair.³¹ In part, the warranty generally states that:

Kia Motors America, Inc. ("Kia") warrants that it will arrange for an Authorized Kia dealer at locations of its choice to provide for the repair of your vehicle if it fails to function properly during normal use.

....

Except as limited or excluded below, all components of your new Kia Vehicle are covered for 60 months/60,000 miles from the Date of First Service, whichever comes first (Basic Limited Warranty Coverage). This Warranty does not cover wear and maintenance items, or those items excluded elsewhere in the Manual. See "Exceptions" and "What is Not Covered."³²

As previously mentioned, the parties did not dispute the existence of the complained of vibration.

2. Reasonable Repair Attempts

The vehicle had reasonable repair attempts under the Lemon Law's statutory presumption. The repair history shows more than four repair attempts in the first 24 months or 24,000 miles.

3. Substantial Impairment or Serious Safety Hazard

Under the reasonable purchaser standard, the subject vehicle does not have a condition that substantially impairs the use or value of the vehicle. Significantly, the test drive showed that vibration from road conditions can drown out the complained of vibration and the alleged vibration is intermittent rather than constant. The road surface clearly affected the observable vibration as much as or more than any vibration from the vehicle itself. Distinguishing between road surface induced vibration and the vehicle's inherent vibration was difficult if not impossible. Additionally, the magnitude of the vibration complicates evaluation of impairment. If the vibration were so severe that the vehicle could not be steered, then use would clearly be impaired. However, in this case, the impact of vibration is much more subjective. Finally, the record contains no evidence of

³⁰ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³¹ TEX. OCC. CODE § 2301.605.

³² Complainant's Ex. 10, 2022 Warranty and Consumer Information Manual.

a serious safety hazard as defined by the Lemon Law. Consequently, a preponderance of the evidence does not show the vehicle has a substantial impairment or serious safety hazard that supports Lemon Law relief.

4. Respondent's Opportunity to Cure

The Respondent argues in part that it should have a final opportunity to repair. However, there is no requirement under the Lemon Law for a final repair attempt. Instead, the Lemon Law requires that the Respondent be given an opportunity to cure the alleged defect. In this case, testimony shows that Complainants contacted the Respondent to have a field technician inspect the vehicle but the Respondent would refer them to the dealer. In essence, the Respondent delegated its opportunity to cure to the dealer. Accordingly, the Respondent had an opportunity to cure.

5. Warranty Repair Relief

As explained in the discussion of applicable law, if a vehicle does not qualify for repurchase/replacement, repair relief may still apply. In the present case, the record reflects that a warrantable defect (the complained of vibration) continues to exist. In conclusion, the vehicle qualifies for repair relief under the Warranty Performance Law.

III. Findings of Fact

1. On August 2, 2021, the Complainants, purchased a new 2022 Kia Telluride from Ancira Kia, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 10 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides coverage for 60 months or 60,000 miles, whichever occurs first.

3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
08/03/2021	115	Obtrusive vibration in steering wheel, front tires, internal fixtures, and steering column initially at highway speeds but later at lower speeds, too.
08/06/2021	277	Same as above.
08/09/2021	631	Same as above.
09/13/2021	2,533	Same as above.
11/11/2021	5,188	Same as above.
12/14/2021	5,950	Same as above.

4. On or about August 11, 2021, the Complainants provided a written notice of defect to the Respondent.
5. On January 17, 2022, the Complainants filed a complaint with the Texas Department of Motor Vehicles alleging that the subject vehicle's steering column would obtrusively vibrate when driving at highway speeds.
6. On April 5, 2022, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the factual matters asserted.
7. The hearing in this case convened on June 10, 2022, in New Braunfels, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Attorney Gerrit Schulze represented the Complainants. Danielle Gaynair, Escalated Case Administrator, represented the Respondent.
8. The vehicle's odometer displayed 18,471 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing.
10. During the test drive at the hearing, Mr. Ahmed identified the complained of vibration as occurring at highway speeds. However, vibration due to the road's surface would obscure the complained of vibration. The vehicle otherwise operated normally.

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 Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a).
7. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
8. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant 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).
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. 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 vibration in the steering column at highway speeds. Upon this Order becoming final under Texas Government Code § 2001.144:³³ (1) the Complainant 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 Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant 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 August 10, 2022



ANDREW KANG
INTERIM CHIEF 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.