

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 22-0009870 CAF**

**ABIGAIL KASTEN,  
Complainant**

**v.**

**KIA MOTORS AMERICA, INC.,  
Respondent**

§  
§  
§  
§  
§  
§  
§  
§

**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Abigail Kasten (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2020 Kia Niro. Complainant asserts that the vehicle drifts to the right when she's driving it and that there is an intermittent clunk or jerk when accelerating in the vehicle. Kia Motors America, Inc. (Respondent) argues that no defect or nonconformity currently exists in the vehicle, and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repurchase relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on May 12, 2022, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Abigail Kasten, Complainant, appeared and represented herself in the hearing. Also appearing and testifying for Complainant was her mother, Manuela Brett. Respondent, Kia Motors America, Inc., was represented by Danielle Gaynair, Escalated Case Administrator. The hearing record closed on May 12, 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 value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to

---

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

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

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>

---

<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. Complainant's Evidence and Arguments**

### **1. Abigail Kasten's Testimony**

Complainant purchased a new 2020 Kia Niro on September 9, 2020, from Ancira Kia (Ancira) located in San Antonio, Texas.<sup>11</sup> The vehicle's mileage at the time of delivery was 163.<sup>12</sup> Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for five (5) years or 60,000 miles, whichever comes first.<sup>13</sup> In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for ten (10) years or 100,000 miles for the original owner<sup>14</sup>. Respondent also provided a warranty for the vehicle's hybrid system providing coverage for the system for ten (10) years or 100,000 miles.<sup>15</sup> On the date of hearing the vehicle's mileage was 19,778 and the vehicle's warranties were still in effect.

Complainant testified that the vehicle consistently drifts severely to the right when she is driving. In addition, beginning in late January or early February of 2022, she has intermittently experienced a clunk or jerk in the vehicle when accelerating after slowing down or from a stop. The clunk or jerk sometimes feels like the vehicle has been rear ended by another vehicle.

Complainant testified that she purchased the vehicle from Ancira in September of 2020. She was not able to test drive the vehicle before purchase as it had to be delivered from another dealership.

Complainant stated that after purchasing the vehicle, she began to notice that it would drift to the right when she was driving. Complainant took the vehicle to Ancira for repair for the issue on June 24, 2021. Ancira's service technician noticed that the vehicle's steering wheel was off center and performed an alignment on the vehicle's tires to address the issue.<sup>16</sup> Complainant stated that she was told that it looked like the vehicle had hit something, although she denied that she had hit anything in the vehicle. Complainant paid for the alignment as it was not covered

---

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

<sup>11</sup> Complainant Ex. 2, Retail Purchase Agreement dated September 9, 2020.

<sup>12</sup> Complainant Ex. 4, Odometer Disclosure Statement dated September 9, 2020.

<sup>13</sup> Complainant Ex. 10, Warranty Information, undated.

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

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

<sup>16</sup> Complainant Ex. 5, Vehicle History Report dated March 7, 2022, p. 2.

under warranty. The vehicle's mileage on this occasion was 12,021.<sup>17</sup> Complainant stated that the vehicle was in Ancira's possession for one (1) to two (2) days. She was not provided with a loaner vehicle while her vehicle was being repaired.

Complainant stated that the vehicle was not drifting as much when she got it back from Ancira. However, as time passed, the drift became more severe. As a result, Complainant took the vehicle to Ancira for further repair for the drifting issue on September 28, 2021. Complainant testified that she was told by the service representative that they couldn't find anything wrong with the vehicle. Although the service invoice indicated that Ancira's service technician verified that the steering wheel was off center at the time she took the vehicle for repair.<sup>18</sup> The invoice indicates that the technician performed a four (4) wheel alignment on the vehicle during this repair visit.<sup>19</sup> The vehicle's mileage on this occasion was 16,104.<sup>20</sup> The vehicle was in Ancira's possession for 2 days. Complainant was not provided a loaner vehicle while her vehicle was being repaired.

Complainant testified that she continued to experience issues with the vehicle drifting to the right after the September repair. In addition, in late January or early February of 2022, Complainant began to intermittently experience a clunk or jerk when accelerating in the vehicle after slowing down or coming to a stop. Complainant took the vehicle to Ancira for repair for both issues on February 8, 2022. Ancira's service technician inspected the vehicle but could not recreate either issue.<sup>21</sup> No repairs were performed at the time. The vehicle's mileage on this occasion was 18,787.<sup>22</sup> Complainant testified that the vehicle was in Ancira's possession until February 24, 2022. Complainant was not provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that she continued to experience issues with the vehicle drifting to the right and with the intermittent clunk or jerk when accelerating. She took the vehicle back to Ancira for repair on March 2, 2022. The service technician inspected the vehicle for the clunk/jerk issue and could not verify the concern.<sup>23</sup> No repair was performed at the time. The issue regarding the vehicle drifting to the right was not addressed during this repair visit. The vehicle's mileage was 19,149.<sup>24</sup> The vehicle was in Ancira's possession until March 7, 2022, on this occasion. Complainant was not provided a loaner vehicle during the repair visit.

---

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

<sup>18</sup> *Id.*, p. 1.

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

<sup>20</sup> *Id.*

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

<sup>22</sup> *Id.*

<sup>23</sup> Complainant Ex. 6, Repair Order dated March 2, 2022.

<sup>24</sup> *Id.*

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 7, 2022.<sup>25</sup> Also, on March 7, 2022, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.<sup>26</sup>

Complainant testified that she continued to experience issues with the vehicle drifting to the right and the clunk/jerk during acceleration. She took the vehicle to Ancira for inspection by Respondent's service technician on April 18, 2022. The technician failed to show up to inspect the vehicle and no repairs were performed at the time.<sup>27</sup> The vehicle's mileage was 19,589.<sup>28</sup> The vehicle was in Ancira's possession until April 28, 2022, during this repair visit. Complainant was provided a loaner vehicle on this occasion.

Respondent rescheduled their technician's inspection of the vehicle for May 10, 2022. The inspection took place at Ancira. The service technician inspected the vehicle and determined that the vehicle's wheels needed alignment in order to address the issue of the vehicle drifting to the right.<sup>29</sup> However, the technician was not able to recreate the clunk/jerk issue during acceleration.<sup>30</sup> The technician determined that the vehicle was performing as designed and no repairs were performed for that issue.<sup>31</sup> The vehicle's mileage on this occasion was 19,730.<sup>32</sup> The vehicle was in Ancira's possession for two (2) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that she is scared to drive the vehicle because of how the vehicle clunks/jerks during acceleration and the way it drifts to the right. During the test drive taken at the time of hearing, Complainant demonstrated that the drift to the right was very severe in that it took only a few seconds after she let go of the steering wheel for the vehicle to start drifting. The car seemed to angle right about 45 degrees during the demonstration. Complainant was not able to recreate the clunk/jerk issue during the test drive. She did state that the last time that the issue occurred was on May 10, 2022, when she was driving the vehicle to Ancira for the inspection by Respondent's service technician.

---

<sup>25</sup> Complainant Ex. 1, Lemon Law Complaint dated March 7, 2022.

<sup>26</sup> Complainant Ex. 9, Letter dated March 7, 2022.

<sup>27</sup> Complainant Ex. 7, Repair Order dated April 18, 2022.

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

<sup>29</sup> Complainant Ex. 8, Repair Order dated May 10, 2022.

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

<sup>31</sup> *Id.*

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

## **2. Manuela Brett's Testimony**

Manuela Brett, Complainant's mother, testified in the hearing. She stated that she does not drive the subject vehicle but is a passenger in the vehicle two (2) to three (3) days per week.

Ms. Brett stated that in March of 2022, she was a passenger in the vehicle when she felt a severe jerk in the vehicle during acceleration. This was the only time she has ever experienced the concern. Ms. Brett stated that the jerk was so severe she thought that another vehicle had hit them from behind.

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

Danielle Gaynair, Escalated Case Administrator, testified for Respondent. She stated that she has never personally seen the vehicle.

Ms. Gaynair testified that she first became aware of Complainant's dissatisfaction with the vehicle after being notified of the filing of the Lemon Law complaint in March of 2022. Ms. Gaynair stated that she contacted Complainant to schedule an appointment for Respondent's service technician to inspect the vehicle. The inspection was first scheduled for April 18, 2022, at Ancira. However, the service technician was unable to inspect the vehicle due to circumstances beyond his control. Ms. Gaynair rescheduled the appointment for May 10, 2022. The inspection took place on that date at the Ancira dealership. The technician was not able to duplicate the clunking/jerking issue but did order a four (4) wheel alignment to be performed on the vehicle to address the drifting issue. As of the date of hearing, the technician had not prepared a written report of his findings.

## **D. Analysis**

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

## **1. Drifting Issue**

The first issue to be addressed is whether Complainant's 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 drifts severely to the right when she's driving and that the issue has not been repaired, despite several repair attempts. It is apparent from the testimony presented that the vehicle does have a defect or nonconformity which creates a serious safety issue since it substantially impedes Complainant's ability to control or operate the vehicle for its intended use or purpose. In addition, the issue substantially affects the vehicle's use and market value, as a potential buyer would be more hesitant to purchase a vehicle that drifts so severely to the right.

Complainant also presented evidence to indicate that Respondent or its authorized representative was provided with a reasonable number of repair attempts to repair the defect or nonconformity with the vehicle. Complainant presented the vehicle for repair to Respondent's authorized dealer on three (3) separate occasions for the drifting issue prior to the filing of the Lemon Law complaint: June 24, 2021; September 28, 2021; and February 8, 2022. In addition, Complainant had the vehicle inspected by Respondent's service technician on May 10, 2022, and he ordered a four (4) wheel alignment on the vehicle to address the drifting issue. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(2) provides that for a nonconformity that creates a serious safety hazard which continues to exist, a rebuttable assumption that a reasonable number of attempts have been undertaken to conform the motor vehicle to an applicable express warranty can be established if the vehicle has been subject to repair two or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner. In the present case, Complainant has met this test, and, despite the repair attempts, the problem continues to exist. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent or its representative and the vehicle has not been repaired.

## **2. Clunking/Jerking Issue**

Complainant provided evidence to establish that the vehicle intermittently clunks/jerks during acceleration. However, the issue has not been able to be duplicated by the dealer's or Respondent's service technicians. In addition, there were three (3) repair attempts on the vehicle for the issue. These repair attempts were on February 8, 2022; March 2, 2022; and May 10, 2022.

The issue does substantially impede Complainant's ability to control or operate the vehicle for its ordinary use and intended purposes and, thus, creates a serious safety hazard as defined in Texas Occupations Code § 2301.601(4). In addition, the issue also substantially impairs the use or market value of the vehicle as a potential buyer would be less likely to buy the vehicle if they were aware of the clunking/jerking issue.

In addition, the evidence presented at the hearing indicates that Complainant provided Respondent with written notice of the defects and a final opportunity to cure the defects. Complainant informed Respondent via letter dated March 7, 2022, of her concerns with the vehicle drifting to the right when she's driving and the clunking/jerking issue during acceleration and providing Respondent with an opportunity to cure. Respondent's service technician inspected the vehicle on May 10, 2022, and was unable to duplicate the issue regarding the vehicle clunking/jerking during acceleration, but did order a four (4) wheel alignment to address the drifting issue.

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

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

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

1. Abigail Kasten (Complainant) purchased a new 2020 Kia Niro on September 9, 2020, from Ancira Kia (Ancira) located in San Antonio, Texas with mileage of 163 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Kia Motors America, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for the first five (5) years or 60,000 miles after delivery, whichever comes first. In addition, Respondent provided a powertrain warranty providing coverage for the vehicle's powertrain for ten (10) years or 100,000 miles for the original owner. Also, Respondent provided a warranty for the vehicle's hybrid system for ten (10) years or 100,000 miles.



3. The vehicle's mileage on the date of hearing was 19,778.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Complainant has experienced issues with the vehicle drifting to the right when she's driving and with an intermittent clunk or jerk when she's accelerating in the vehicle.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Ancira, in order to address her concerns with the vehicle pulling to the right and intermittently jerking during acceleration on the following dates:
  - a. June 24, 2021, at 12,021 miles;
  - b. September 28, 2021, at 16,104 miles;
  - c. February 8, 2022, at 18,787 miles and
  - d. March 2, 2022, at 19,149 miles.
7. On June 24, 2021, Ancira's service technician performed a wheel alignment on the vehicle in order to resolve the issue of it pulling to the right. This was not covered under warranty.
8. On September 28, 2021, Ancira's service technician verified that the vehicle pulled to the right and that the steering wheel was not centered.
9. During the repair visit described in Findings of Fact #8, the service technician performed a four (4) wheel alignment on the vehicle to correct the issue.
10. On February 8, 2022, Ancira's service technician was unable to verify that the vehicle pulled to the right and was unable to duplicate the clunk or jerk described by Complainant. No repairs were performed at the time.
11. On March 2, 2022, Ancira's service technician was unable to duplicate the issue regarding the vehicle jerking during acceleration. No repair was performed at the time.
12. On March 7, 2022, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On March 7, 2022, Complainant mailed a letter to Respondent advising them that she was dissatisfied with the vehicle.

14. On April 18, 2022, Complainant took the vehicle to Ancira for repair for the issues of the vehicle drifting to the right and the clunking/jerking during acceleration. The vehicle's mileage was 19,589 at the time.
15. The repair visit described in Findings of Fact #14 was scheduled to allow Respondent's service technician to inspect the vehicle and to determine if any repairs could be performed to resolve Complainant's concerns with the vehicle.
16. Respondent's service technician was unable to make it to the dealership due to unforeseen circumstances and was unable to inspect the vehicle during the repair visit described in Findings of Fact #14. No repairs were performed at the time.
17. Respondent scheduled another appointment with Complainant in order to allow Respondent's service technician to inspect the vehicle.
18. The inspection was performed on May 10, 2022, at Ancira. The vehicle's mileage was 19,730 at the time.
19. During the inspection described in Findings of Fact #18, the service technician could not duplicate the concern regarding the vehicle clunking or jerking during acceleration and no repair was performed for the issue.
20. Also, during the inspection described in Findings of Fact #18, Respondent's service technician requested that Ancira's service technician perform a four (4) wheel alignment on the vehicle's tires in order to address the issue with the vehicle drifting to the right when it's being driven.
21. The vehicle still drifts severely to the right when it is being driven.
22. Complainant last felt the vehicle clunk or jerk on the morning of May 10, 2022, when she was driving the vehicle to Ancira for Respondent's inspection.
23. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$27,343.29
Delivery mileage	163
Mileage at first report of defective condition	12,021
Mileage on hearing date	19,778
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$27,343.29				
Mileage at first report of defective condition	12,021				
Less mileage at delivery	<u>-163</u>				
Unimpaired miles	11,858				
Mileage on hearing date	19,778				
Less mileage at first report of defective condition	<u>-12,021</u>				
Impaired miles	<u>7,757</u>				
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
	<u>11,858</u>				
	120,000	X	\$27,343.29	=	\$2,701.97
Impaired miles					
	<u>7,757</u>				
	120,000	X	\$27,343.29	X .5	= <u>\$883.76</u>
Total reasonable allowance for use deduction:	\$3,585.73				
Purchase price, including tax, title, license and registration	\$27,343.29				
Less reasonable allowance for use deduction	-\$3,585.73				
Plus filing fee refund	<u>\$35.00</u>				
TOTAL REPURCHASE AMOUNT	\$23,792.56				

24. On April 20, 2022, 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.
25. The hearing in this case convened on May 12, 2022, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Abigail Kasten, Complainant, appeared and represented herself in the hearing. Also appearing and testifying for Complainant was her mother, Manuela Brett. Respondent, Kia Motors America, Inc., was represented by Danielle Gaynair, Escalated Case Administrator. The hearing record closed on May 12, 2022.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant's vehicle has existing defects or conditions (the vehicle pulls to the right and the vehicle intermittently clunks/jerks during acceleration) that create a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle has existing defects or conditions (the vehicle pulls to the right and the vehicle intermittently clunks/jerks during acceleration) that substantially impair Complainant's use or market value of the vehicle. Tex. Occ. Code § 2301.604(a).
8. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
9. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief and repurchase of the 2020 Kia Niro under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

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

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

2. Respondent shall repurchase the subject vehicle in the amount of **\$23,792.56**. (This total includes the \$35.00 Lemon Law filing fee.) The total refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent, Kia Motors America, Inc., shall repair the warrantable defects (the vehicle pulls to the right and the vehicle intermittently jerks during acceleration) in the reacquired vehicle identified in this Decision.

**SIGNED May 19, 2022.**



---

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