

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0018471 CAF**

**ASRAR AHMED,
Complainant**

v.

**HYUNDAI MOTOR AMERICA,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Asrar Ahmed (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in a vehicle distributed by Hyundai Motor America (Respondent). A preponderance of the evidence shows that Complainant's vehicle qualifies for repurchase relief.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on February 8, 2023, in Houston, Texas, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). The Complainant appeared and represented himself. Respondent appeared through its representative Susan Lucas. The hearing concluded the same day, but the record was held open until February 10, 2023, to allow Complainant to submit additional evidence.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.¹ If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.² The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.³

A. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.⁴ A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses resulting from the loss of use of the vehicle due to the defect(s).⁵ A vehicle qualifies for repurchase or replacement if all the following conditions are met:

- 1) the vehicle has a defect covered by an applicable warranty (applicable 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” to repair the vehicle.⁶

The above terms are further defined by the Lemon Law statute and case law.

¹ Tex. Occ. Code § 2301.603(a).

² Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

³ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁴ Tex. Occ. Code § 2301.603

⁵ Tex. Occ. Code § 2301.604.

⁶ Tex. Occ. Code § 2301.604(a).

1. Serious Safety Hazard

The Lemon Law statute defines “serious safety hazard” as a life-threatening malfunction or non-conformity 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.⁷

2. Substantial Impairment of Use or Value

a. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use of the vehicle. 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.⁸ For example, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁹

b. 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.”¹⁰ 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

⁷ Tex. Occ. Code § 2301.601(4).

⁸ *Dutchmen Manufacturing, Inc. v. Texas Dep’t of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App. – Austin 2012).

⁹ *Id.*

¹⁰ *Id.*

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.”¹¹

3. 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.¹²

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 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.¹³

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

¹¹ *Id.*

¹² Tex. Occ. Code § 2301.605(a)(1).

¹³ Tex. Occ. Code § 2301.605(a)(2).

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.¹⁴

The 30 days described above do not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁵

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.¹⁶ 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.¹⁷

4. Other Requirements for Repurchase/Replacement

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;¹⁸

¹⁴ Tex. Occ. Code § 2301.605(a)(3).

¹⁵ Tex. Occ. Code § 2301.605(c).

¹⁶ *Ford Motor Company v. Texas Dep't 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.’”).

¹⁷ *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.”).

¹⁸ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.204.

- (2) the respondent was given an opportunity to cure the defect or nonconformity;¹⁹ and
- (3) the Lemon Law complaint was filed within 6 months after the earliest of:
 - (a) the warranty's expiration date; or
 - (b) 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.²⁰

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the complainant for reasonable incidental expenses resulting from the vehicle's loss of use due to the defect.²¹ 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.²² However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²³

¹⁹ 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 Dep't of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221, 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. 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.

²⁰ Tex. Occ. Code § 2301.606(d).

²¹ Tex. Occ. Code § 2301.604(a).

²² 43 Tex. Admin. Code § 215.209(a).

²³ 43 Tex. Admin. Code § 215.208(b)(1).

B. Warranty Repair Relief

If a vehicle does not qualify for repurchase or replacement, the vehicle may still qualify for warranty repair relief.²⁴ A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle;”
- 2) the vehicle owner, or the owner’s designated agent, provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration; and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.²⁵

C. The Lemon Law Complaint Identifies the Relevant Issues in the Case

The complaint filed with the Department identifies the relevant issues to address at the hearing. The complaint must state “sufficient facts to enable the [D]epartment 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.”²⁶ However, the parties may expressly or impliedly consent to hearing issues not included in the complaint or pleadings.²⁷ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁸ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁹

²⁴ 43 Tex. Admin. Code § 215.208(e).

²⁵ Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

²⁶ 43 Tex. Admin. Code § 215.202(a)(3), (b)(1).

²⁷ 43 Tex. Admin. Code § 215.42; Tex. R. Civ. P. 67.

²⁸ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App. – San Antonio 1953, writ ref’d).

²⁹ See Tex. Gov’t Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

D. Burden of Proof

The Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.³⁰ That is, the Complainant must present sufficient evidence to show that it is more likely than not that every required fact for relief exists.³¹

III. DISCUSSION**A. Summary of Complainant's Evidence and Arguments**

On April 2, 2022, Complainant purchased a new 2022 Hyundai Palisade from Sterling McCall Hyundai South Loop, a franchised dealer of Respondent, in Houston, Texas. The purchase price of the vehicle was \$51,537.82, including tax, title, license, and registration.³² The vehicle had 15 miles on the odometer at the time of purchase.³³

The vehicle's limited warranty provides basic coverage for 5 years or 60,000 miles, whichever occurs first, and powertrain coverage for 10 years or 100,000 miles, whichever occurs first.³⁴ The new vehicle limited warranty "[c]overs repair or replacement of any component manufactured or originally installed by Hyundai that is defective in material or factory workmanship, under normal use and maintenance."³⁵

On August 1, 2022, Complainant filed a Lemon Law complaint with the Department alleging that the vehicle pulls to the right while driving and requires constant correction to keep

³⁰ 43 Tex. Admin. Code § 206.66(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 of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.").

³¹ E.g., *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

³² Complainant's Ex. 5.

³³ Complainant's Ex. 1.

³⁴ <https://www.hyundaiusa.com/us/en/assurance/america-best-warranty>.

³⁵ *Id.*

the vehicle driving straight. On August 4, 2022, the Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the alleged defects.

In relevant part, the Complainant took the vehicle to a dealer for repair as follows:

Date	Miles	Issue
04/12/2022	377	Vehicle pulls to the right and requires constant correction to drive straight
04/13/2022	459	Vehicle pulls to the right and requires constant correction to drive straight
05/03/2022	1,277	Vehicle pulls to the right and requires constant correction to drive straight
08/23/2022	5,334	Vehicle pulls to the right and requires constant correction to drive straight
01/12/2023	8,113	Vehicle pulls to the right and requires constant correction to drive straight

Prior to purchasing the vehicle, Complainant noticed during the test drive that it pulled to the right while driving. Complainant was told that the vehicle needed to be driven and “broken in.” Two weeks after purchasing the vehicle, the problem persisted, and Complaint took the vehicle to the Sterling McCall dealership for repair. A four-wheel alignment was performed. However, the problem continued after the repair, and Complainant took the vehicle back the next day. He was told to put more miles on the vehicle.

Complainant testified that the problem has never been corrected. He took the vehicle back to the Sterling McCall dealership two more times, around the end of April and the beginning of May. He was not given any paperwork or invoices. At each visit, the vehicle was test driven with Complainant and without Complainant. The dealership refused to acknowledge that there was a problem and told Complainant that is just how the vehicle drives.

On May 3, 2022, Complainant took the vehicle to another dealership, West Houston Hyundai, for repair of the same problem. Another four-wheel alignment was performed. Complainant test drove the vehicle with the service foreman, and the problem still persisted. He was told to drive the vehicle for at least 5,000 miles to see if the problem would resolve itself.

On August 23, 2022, after the vehicle had over 5,000 miles, Complainant took the vehicle back to West Houston Hyundai for the same issue. Complainant left the vehicle with the dealer for two days. Complainant drove a rental car during that time. West Houston Hyundai acknowledged the problem and told Complainant that the vehicle was safe to drive. However, a Hyundai engineer would need to evaluate the vehicle and determine the best solution. He was told he would be contacted when an engineer was available.

On January 12, 2023, Complainant was told to bring the vehicle back to West Houston Hyundai for inspection and repair. The Hyundai engineer was not physically present, but the vehicle was attached to equipment, and the engineer diagnosed the problem remotely. He found that the steering wheel torque sensor needed calibration, and the repair was performed. Complainant explained that after the repair, the severity of the pulling was lessened, but the problem still persisted. Two weeks later, Complainant sent an email to the service manager advising that the problem had not been resolved.

Complainant spoke with Respondent's corporate customer service over the phone several times and was always referred back to the dealership. The dealership said the vehicle was very new and referred Complainant back to corporate customer service.

According to Complainant, the vehicle still pulls to the right. It is more pronounced at lower speeds, between 30-50 mph, and is more manageable at higher speeds. Complainant explained that he experiences the pulling even when driving under ideal road conditions. In addition, the pulling has caused physical strain on Complainant's shoulder and arm because the vehicle requires constant correction to the left. Complainant is the only driver of the vehicle. His work commute is approximately 8-10 miles, and he typically drives 50-100 miles in the city.

Complainant asks that the problem be acknowledged and the vehicle be repaired, if a solution exists. However, if a timely solution cannot be found, Complainant requests repurchase of the vehicle.

B. Vehicle Inspection

Upon inspection at the hearing, the subject vehicle's odometer displayed 8,845 miles. During the test drive, the vehicle drifted to the right three or more times within 2 miles. The vehicle drifted while traveling at speeds between 30-40 mph. At various times while driving, Complainant released the steering wheel, and the vehicle drifted to the right. At one point, the vehicle drifted into the adjacent lane until corrected by Complainant. The vehicle's odometer displayed 8,849 miles at the end of the test drive.

C. Summary of Respondent's Evidence and Arguments

Ms. Lucas added information regarding the vehicle's service history. She explained that after the repair on May 3, 2022, the vehicle was road tested, and the technician did not find any issues. Likewise, after the repair on January 12, 2023, the vehicle was test driven, and no issues were noted.

Since the last repair, Respondent is not aware of any issues with the vehicle. However, Respondent acknowledges that Complainant experiences the vehicle pulling to the right while driving. Respondent asks for denial of Complainant's claim.

D. Analysis

The Complainant had the burden of proof to show that the subject vehicle qualified for relief. To qualify for relief, the Complainant must prove the required elements by a preponderance of the evidence. Based on the evidence presented, the Complainant established the facts necessary for relief.

Complainant initially requested repair of the vehicle, if possible. However, a review of the evidence reveals that Respondent has attempted to repair the vehicle at least four times and was unsuccessful each time. Respondent even enlisted the help of its technical engineer to no avail. Therefore, the probability that another repair attempt would be successful is extremely low.

Complainant stated that if repair of the vehicle is not possible, he requests the vehicle be repurchased by Respondent. The Hearings Examiner agrees that repurchase of the vehicle is the appropriate remedy under the circumstances.

A preponderance of the evidence shows that the subject vehicle qualifies for repurchase relief. The subject vehicle does not operate as intended and has a defect covered by an applicable warranty. In addition, the vehicle continues to have a warrantable defect that substantially impairs the market value of the vehicle. Despite numerous attempts to repair the vehicle, it still pulls to the right while driving and requires constant correction to stay in its lane. Under the reasonable prospective purchaser standard, the condition of the vehicle would deter a purchaser from buying the vehicle or substantially negatively affect how much the purchaser would be willing to pay.

Further, the defect continues to exist after a reasonable number of repair attempts. The repair history shows that the vehicle continues to have the same problem after being subject to repair four or more times, and the repair attempts were made during the applicable warranty period. In addition, notice of the defect was provided to Respondent, and Respondent was given an opportunity to cure the defect. The Lemon Law complaint was timely filed. Accordingly, repurchase relief applies in this case.

The Department's rules list the appropriate calculations for repurchase,³⁶ and the specific calculations are applied as follows:

³⁶ 43 Tex. Admin. Code § 215.208(b)(1),(2).

Purchase price, including tax, title, license & registration	\$51,537.82
Delivery mileage	15
Mileage at first report of defective condition	377
Mileage on hearing date	8,847
Useful life determination	120,000
Purchase price, including tax, title, license & registration	\$51,537.82
Mileage at first report of defective condition	377
Less mileage at delivery	-15
Unimpaired miles	362
Mileage on hearing date	8,847
Less mileage at first report of defective condition	-377
Impaired miles	8,470
<i>Reasonable Allowance for Use Calculations:</i>	
Unimpaired miles	$362 \div 120,000 \times \$51,537.82 = \$155.47$
Impaired miles	$8,470 \div 120,000 \times \$51,537.82 \times 50\% = \$1,818.86$
Total reasonable allowance for use deduction	\$1,974.33
Purchase price, including tax, title, license & registration	\$51,537.82
Less reasonable allowance for use deduction	-\$1,974.33
Plus filing fee refund	\$35.00
Plus incidental expenses	\$0.00
TOTAL REPURCHASE AMOUNT	\$49,598.49

Based on the above calculations, Respondent shall repurchase the subject vehicle in the amount of **\$49,598.49**.

IV. FINDINGS OF FACT

1. On April 2, 2022, Asrar Ahmed (Complainant) purchased a new 2022 Hyundai Palisade from Sterling McCall Hyundai South Loop, a franchised dealer of Hyundai Motor America (Respondent), in Houston, Texas. The vehicle was distributed by Respondent.
2. The purchase price of the vehicle was \$51,537.82, including tax, title, license, and registration.
3. The vehicle had 15 miles on the odometer at the time of purchase.
4. The vehicle's limited warranty provides basic coverage for 5 years or 60,000 miles, whichever occurs first, and powertrain coverage for 10 years or 100,000 miles, whichever occurs first.

5. The new vehicle limited warranty covers repair or replacement of any component manufactured or originally installed by Hyundai that is defective in material or factory workmanship, under normal use and maintenance.
6. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
04/12/2022	377	Vehicle pulls to the right and requires constant correction to drive straight
04/13/2022	459	Vehicle pulls to the right and requires constant correction to drive straight
05/03/2022	1,277	Vehicle pulls to the right and requires constant correction to drive straight
08/23/2022	5,334	Vehicle pulls to the right and requires constant correction to drive straight
01/12/2023	8,113	Vehicle pulls to the right and requires constant correction to drive straight

7. On August 1, 2022, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle pulled to the right while driving and required constant correction to drive straight.
8. On August 4, 2022, the Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the alleged defect.
9. On October 28, 2022, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
10. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.
11. On February 8, 2023, a hearing on the merits was convened in Houston, Texas, before OAH Chief Hearings Examiner Bennie Brown. The Complainant appeared and represented himself. Respondent appeared through its representative Susan Lucas. The hearing

concluded the same day, but the record was held open until February 10, 2023, to allow Complainant to submit additional evidence.

12. The vehicle's odometer displayed 8,845 miles at the time of the hearing.
13. The vehicle's warranty was in effect at the time of the hearing.
14. The vehicle pulls to the right while driving and requires constant correction to drive straight.
15. The vehicle does not operate as intended and has a defect covered by an applicable warranty.
16. The vehicle continues to have a warrantable defect that substantially impairs the market value of the vehicle.
17. The vehicle's repair history shows that the problem continues to exist after being subject to repair four or more times.
18. The repair attempts were made during the applicable warranty period.
19. Respondent was given an opportunity to cure the defect after being provided notice.
20. The Lemon Law complaint was timely filed.
21. The vehicle qualifies for repurchase relief.
22. The appropriate calculations for repurchase are as follows:

Purchase price, including tax, title, license & registration	\$51,537.82
Delivery mileage	15
Mileage at first report of defective condition	377
Mileage on hearing date	8,847
Useful life determination	120,000

Purchase price, including tax, title, license & registration	\$51,537.82
Mileage at first report of defective condition	377
Less mileage at delivery	-15
Unimpaired miles	362
Mileage on hearing date	8,847
Less mileage at first report of defective condition	-377
Impaired miles	8,470
<i>Reasonable Allowance for Use Calculations:</i>	
Unimpaired miles	$362 \div 120,000 \times \$51,537.82 = \$155.47$
Impaired miles	$8,470 \div 120,000 \times \$51,537.82 \times 50\% = \$1,818.86$
Total reasonable allowance for use deduction	\$1,974.33
Purchase price, including tax, title, license & registration	\$51,537.82
Less reasonable allowance for use deduction	-\$1,974.33
Plus filing fee refund	\$35.00
Plus incidental expenses	\$0.00
TOTAL REPURCHASE AMOUNT	\$49,598.49

V. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with 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 Complainant filed a sufficient complaint with the Department. 43 Tex. Admin. Code § 215.202.
4. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. The Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. The Complainant, or a person on behalf of the Complainant, or the Department provided sufficient notice of the alleged defect(s) to the Respondent. Tex. Occ. Code § 2301.606(c)(1).
7. The Respondent had an opportunity to cure the alleged defect(s). Tex. Occ. Code § 2301.606(c)(2).

8. The Complainant's vehicle qualifies for repurchase. A warrantable defect that substantially impairs the market value of the vehicle continues to exist after a reasonable number of repair attempts. Tex. Occ. Code § 2301.604(a).

VI. 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-.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Order. **IT IS THEREFORE ORDERED** that:

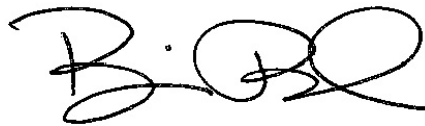
1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase, the vehicle is substantially damaged or there 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. The Respondent shall repurchase the subject vehicle in the amount of **\$49,598.49**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of return, the 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, the Complainant is responsible for providing the Respondent with clear title to the vehicle;
3. The parties shall complete the return and repurchase of the subject vehicle within **20 days** after the date this Order becomes final under Texas Government Code § 2001.144.³⁷

³⁷ 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.

However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. The 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. The 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. The 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 days of the transfer.

SIGNED April 10, 2023



**BENNIE BROWN
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**