

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-00003494 CAF**

**MATTHEW-STERLING WINN,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Matthew-Sterling Winn (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in a vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that the Complainant's vehicle does not qualify for warranty repair 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 July 27, 2023, in Carrollton, Texas, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). Complainant appeared and represented himself. Respondent appeared electronically through its representative Anthony Gregory. The hearing concluded the same day, but the parties agreed to abate the case for 45 days to attempt to diagnose and repair the subject vehicle and to submit additional evidence. The issue was not resolved, and the abatement was lifted. The record closed on September 13, 2023. However, in the interest of justice and judicial economy, the record was reopened to allow further evidence. The record officially closed on October 4, 2023.

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 The complaint filed with the Department identifies the relevant issues to address at the hearing.⁴ Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁵ Failure to prove even one required fact results in denial of relief.

In this case Complainant is seeking repair of alleged warrantable defects. 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;”⁶
- 2) the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration;⁷ and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.⁸

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 Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent. *See* Tex. Gov’t Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

⁵ 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.”).

⁶ Tex. Occ. Code § 2301.204(a).

⁷ Tex. Occ. Code § 2301.204(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

⁸ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

III. DISCUSSION

A. Summary of Complainant's Evidence and Arguments

On June 16, 2020, Complainant purchased a pre-owned 2019 Ford Fusion from Mac Haik Ford, a franchised dealer of Respondent, located in DeSoto, Texas. The vehicle had 12,238 miles on the odometer at the time of purchase.⁹ The vehicle's bumper-to-bumper warranty provides coverage for 3 years or 36,000 miles, whichever occurs first. The vehicle's powertrain warranty provides coverage for 5 years or 60,000 miles, whichever occurs first.¹⁰ Respondent also provides an Emissions Defect Warranty and an Emissions Performance Warranty in compliance with federal requirements. These warranties provide coverage for 2 years or 24,000 miles, and certain emissions parts are covered for 8 years or 80,000 miles.¹¹

On November 11, 2022, Complainant filed a complaint with the Department alleging emissions and transmission issues with the vehicle. Specifically, the complaint alleged that the transmission shifts excessively hard between gears and that emissions issues still exist despite the replacement of the 02 sensors twice in one month and replacement of the catalytic converter. On November 14, 2022, the Department sent a copy of the complaint to Respondent providing written notice of the alleged defects.

In relevant part, the vehicle was taken to Ford for repair of the alleged issues as follows:

Date	Miles	Issue
01/15/2022- 01/21/2022 ¹²	34,562	Check engine light on; light off at dealership; no work performed

⁹ Complainant Ex. 2.

¹⁰ Complainant Ex. 13.

¹¹ Respondent Ex. 3. Respondent's bumper-to-bumper warranty surpasses the 2-year, 24,000-mile mandatory federal coverage.

¹² Complainant Ex. 6.

01/24/2022- 02/10/2022 ¹³	34,562	Vehicle not starting. Tune up performed; spark plugs replaced; fuel injection and air induction service performed; reprogrammed PCM; 02 downstream sensor replaced
10/13/2022- 11/17/2022 ¹⁴	45,226	Hard shifting with transmission; check engine light on. Transmission assembly and catalytic converter replaced; reprogrammed PCM
09/07/2023 ¹⁵ FSE Inspection	55,261	Powertrain alerts; shifting concerns; vehicle will not start at times.

Complainant testified that on October 26, 2021, he was involved in a minor no-fault accident. Another driver ran into Complainant's vehicle. The other driver did not have insurance. Complainant filed the claim with his insurance company which advised him to take the vehicle to Service King for repair. Service King started working on the vehicle on November 1, 2021. On November 11, 2021, the Ford Pass application notified Complainant that the vehicle had a fault with the O2 sensor. Complainant notified Service King, but they advised the work they were performing was not near the O2 sensor and they were unsure why Complainant received the notification.

On November 19, 2021, the body damage repair was complete, but Service King notified Complainant that the vehicle would not start and they needed to keep it a few more days. On November 26, 2021, Complainant was advised that the vehicle started and he could pick it up.

On December 24, 2021, the vehicle would not start. The vehicle was towed to Service King and was evaluated by their subsidiary, Elitek Vehicle Services. Elitek advised that the 02 downstream sensor was the reason for the no start issue. Although Service King advised they did not do any work related to that part, they agreed to repair the vehicle since the alert happened while the vehicle was in their possession. A new sensor was ordered from Ford on January 6, 2021.

¹³ Complainant Ex. 7.

¹⁴ Complainant Ex. 4.

¹⁵ Respondent Ex. 2.

After installing the O2 sensor, the vehicle still did not start. The spark plugs were cleaned, and Complainant was told to put new gas in the vehicle.

After picking up the vehicle, Complainant took the vehicle to Mac Haik Ford (Mac Haik) for diagnostics on January 15, 2022. Mac Haik advised that the vehicle had bad fuel and recommended that the gas tank be flushed. While at the dealership, the vehicle would not start. Mac Haik advised that repairs were needed and told Complainant that Service King had replaced the downstream O2 sensor with a non-Ford part. Complainant testified that he obtained proof from Service King that the part had been purchased from Ford. At this point, Complainant began to lose confidence in Mac Haik since he had been given misinformation about the part. While at the dealership, Mac Haik performed a tune-up, replaced the spark plugs, replaced the O2 upstream sensor, and performed a fuel injection and air induction service. The repairs were completed on February 14, 2022. Complainant picked up the vehicle a few days later.

A couple of weeks later, Complainant noticed that the vehicle began shifting hard between gears. Complainant explained that the vehicle has a start/stop function which turns off the engine when the vehicle is stopped, at a red light, for example. When the gas pedal is pressed, the engine engages and the vehicle moves forward. Prior to the accident, Complainant noticed that the vehicle shifted very hard when the start/stop function was activated. However, Complainant turned off the start/stop function and did not think much about it.

In September 2022, the vehicle began shifting very hard between gears. The engine light came on, and Complainant received more alerts through the Ford Pass application advising that the catalytic converter and transmission were malfunctioning. Complainant took the vehicle in for service. On October 19, 2022, Complainant was advised that the catalytic converter needed replacement. After replacing it, the vehicle was test driven, and the hard shifting between gears was still present but no trouble codes were found. The service manager emailed Complainant and advised that they had to follow Ford protocol and tear down the transmission to diagnose any problems. On November 11, 2022, Complainant was notified that a manufacturing defect was found and the transmission would be replaced. The repairs were completed on November 17, 2022.

On December 10, 2022, Complainant received a notification on the Ford Pass application that there was a powertrain malfunction. On January 5, 2023, Complainant emailed Mr. Gregory regarding the notification. No response was received. On February 14, 2023, the vehicle slipped out of gear, the transmission jerked, the engine light came on, and the vehicle shut off. The Ford Pass application recommended taking the vehicle in for service immediately. Complainant emailed Mr. Gregory and called Mac Haik to advise them of the current issues. Mac Haik advised that no loaner cars were available and that it could take up to 3 weeks to inspect the vehicle.

On February 16, 2023, Complainant took the vehicle to a local mechanic, AJ's Auto Services. No trouble codes were found, and Complainant was advised to take the vehicle back to Ford since it was still under warranty. The check engine light was no longer activated.

However, on June 23, 2023, the check engine light came back on, and the Ford Pass application displayed a service engine light warning and advised of issues with the evaporative emission system. After the prehearing conference on June 26, 2023, Mr. Gregory contacted Complainant and advised that Ford's field service engineer had never inspected the vehicle. Mr. Gregory stated that he would arrange for the vehicle to be inspected.

On July 13, 2023, Complainant was advised to take the vehicle back to Mac Haik for inspection. However, Complainant explained that he did not want to take the vehicle to Mac Haik because he had problems with the service manager.

Complainant testified that the vehicle's current mileage is 53,742 miles. He explained that he is still experiencing issues with the vehicle. First, whenever he puts gas in the vehicle, it will not start. He has to wait and attempt to start the vehicle three or four times before it starts. Second, the check engine light is on, and he receives error messages for the evaporative emissions system. He believes the evaporative emissions system and the O2 sensors are related, which may be the reason for the no start issue. Third, the transmission is knocking although the hard shifting has been resolved.

Complainant testified that at the time of the hearing, the vehicle had not been taken in for the evaporative emissions system errors because no loaner cars were available from the dealer or commercial rental companies. However, after the hearing, the parties agreed to allow Respondent to have the vehicle inspected by a field service engineer. The vehicle was inspected for three concerns: powertrain alerts, shifting concerns, and the vehicle failing to start at times. The findings from this inspection are noted in the Summary of Respondent's Evidence section of this decision.

Following the inspection, Complainant advised that the vehicle's transmission shakes while idling. He also advised that the vehicle consistently fails to start after filling it with a fresh tank of gas. Complainant argues that this issue falls under the federal Clean Air Act (CAA) and should be repaired by Respondent.¹⁶

B. Vehicle Inspection

The vehicle mileage at the time of the hearing was 53,759 miles. The engine came light came on when the vehicle was started, and the Ford Pass application sent a notification to service the engine soon. The details indicated that a concern was detected with the evaporative emissions system.

C. Summary of Respondent's Evidence and Arguments

Mr. Gregory stated at the time the complaint was filed, the vehicle's mileage was 45,230 miles and it was still under the vehicle's powertrain warranty. He pointed out that the vehicle may only qualify for repair, not repurchase or replacement.

After the hearing on the merits, the parties agreed to have the vehicle inspected by a field service engineer. The inspection took place on September 7, 2023, by Field Service Engineer

¹⁶ 42 U.S.C. § 7401 *et. seq.*

(FSE) Patrick Johnson.¹⁷ The vehicle mileage was 55,261 miles. The FSE inspected the vehicle for three concerns: powertrain alerts, shifting concerns, and the vehicle failing to start at times.

Diagnostic Trouble Code (DTC) P0496 was found relating to purge valve emissions, which can trigger a check engine light. The technician determined that the purge valve was seized and could not be commanded to move with the scan tool. The recommended correction was to have the purge valve replaced. However, the report stated the vehicle is no longer covered by the bumper-to-bumper warranty, and the Complainant would need to pay for the repair.

Although Complainant testified that the shifting concerns had been resolved, the technician used the scan tool to evaluate this issue. It was discovered that the transmission solenoid strategy number was not saved. The number was pulled from the transmission tag and saved with the scan tool. The vehicle was test driven for 9 miles, and the transmission operated smoothly. No clutch slipping was verified with the scan tool. No shifting concerns were observed.

Regarding the start issue, the vehicle was started ten times. It started every time with no prolonged crank. The concern could not be duplicated.

D. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief pursuant to statute. Because the vehicle was purchased as a pre-owned vehicle, the only remedy provided by statute is warranty repair.¹⁸ To qualify for relief, Complainant must prove the required elements by a preponderance of the evidence. Based on the evidence presented, Complainant failed to establish the facts necessary for warranty repair relief.

To qualify for warranty repair, it must be shown that the vehicle has a “defect. . . covered by a manufacturer’s, converter’s, or distributor’s . . . warranty agreement applicable to the

¹⁷ Respondent Ex. 2.

¹⁸ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

vehicle.”¹⁹ Complainant complains of three issues with the vehicle. First, the check engine light is on, and details in the Ford Pass application indicate that a concern has been detected with the evaporative emissions system. The field service engineer inspected the vehicle on September 7, 2023, and determined that the check engine light was triggered by DTC P0496, which relates to purge valve emissions. It was recommended that the purge valve be replaced to correct this issue, but the repair is no longer covered by the bumper-to-bumper warranty.²⁰

Complainant argues that this issue is covered by the vehicle’s powertrain warranty and/or the Emissions Defect and Emissions Performance Warranty. However, the vehicle’s powertrain warranty does not list this issue as a covered item.²¹ The Emissions Defect Warranty and the Emissions Performance Warranty list the evaporative emission control system as a covered part, but the warranty period only lasts for 3 years or 36,000 miles.²² The subject vehicle currently has over 55,000 miles and is no longer covered by the 3-year, 36,000-mile warranty period. However, the Emissions Defect and Emissions Performance Warranty coverage periods are extended to 8 years or 80,000 miles for the following parts: “catalytic converters, *electronic* emissions control unit, and onboard emissions diagnostic devices, including Battery Energy Control Module (BECM).”²³ The evidence presented was inconclusive to show that the purge valve is related to or part of the catalytic converter, the *electronic* emissions control unit, or the onboard emissions diagnostic devices. Therefore, the check engine light issue, which coded as being related to the purge valve, is not a defect covered by warranty and does not qualify for relief.

The second issue Complainant asserts is that the vehicle fails to start after filling it with a fresh tank of gas.²⁴ Complainant testified that he believes the evaporative emissions system and

¹⁹ Tex. Occ. Code § 2301.204(a).

²⁰ Respondent Ex. 2.

²¹ Respondent Ex. 3 at 13-17.

²² As noted earlier, Respondent’s bumper-to-bumper warranty surpasses the 2-year, 24,000-mile mandatory federal coverage.

²³ Respondent Ex. 3 at 22-25 (emphasis added).

²⁴ This specific issue was not listed in the complaint filed with the Department. However, it was raised during the hearing on the merits without objection and is deemed to have been tried by consent. Tex. R. Civ. P. 67; *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

the O2 sensors are related, which may be the reason for the no start issue. Based on the evidence presented, the subject vehicle was evaluated for a general no start issue on January 24, 2022. At that time, a tune up was performed, the spark plugs were replaced, a fuel injection and air induction service were performed, the PCM was reprogrammed, and the O2 downstream sensor was replaced. The next evaluation of the general no start issue occurred during the FSE inspection. The subject vehicle did not display any start issues during the FSE inspection or during the inspection at the hearing. No evidence was offered to show that the vehicle was specifically inspected or diagnosed for failing to start after being filled with gasoline. Therefore, the evidence is insufficient to show that this issue is a defect covered by a manufacturer's warranty.

The final issue Complainant asserts is that the vehicle's transmission shakes while idling and knocks. In his original complaint, Complainant asserted that the transmission shifted excessively hard between gears. He testified at the hearing that the hard shifting issue had been resolved but stated that the transmission knocks and did not provide any detail. The transmission was inspected after the hearing in September 2023 by the FSE who reported that the transmission shifted smoothly and no concerns were noted. Based on the evidence presented, it appears that the hard shifting and knocking issues have been resolved.

Complainant first raised the shaking while idling issue in an email after the hearing on the merits and after the FSE inspection. This issue was not listed in the original complaint nor was it raised or tried by consent at the hearing. Although this issue may or may not be related to the transmission, it is a different issue than the hard shifting issue listed in the complaint. The hard shifting issue has been resolved and no longer exists. The shaking while idling is a new issue not properly raised or addressed in the complaint or at the hearing. As a result, it is outside the scope of the hearing, and the shaking issue fails to qualify for statutory relief.²⁵

²⁵ Respondent, however, remains responsible to address and repair or correct any defects that are covered by Respondent's warranty. Tex. Occ. Code § 2301.204.

For the reasons listed above, the Hearings Examiner finds that Complainant has failed to meet his burden of proof to establish all elements required for relief pursuant to statute.²⁶ Therefore, the subject vehicle does not qualify for warranty repair relief.

IV. FINDINGS OF FACT

1. On June 16, 2020, Matthew-Sterling Winn (Complainant) purchased a pre-owned 2019 Ford Fusion from Mac Haik Ford, a franchised dealer of Ford Motor Company (Respondent), located in DeSoto, Texas. The vehicle had 12,238 miles on the odometer at the time of purchase.
2. The vehicle's bumper-to-bumper warranty provides coverage for 3 years or 36,000 miles, whichever occurs first. The vehicle's powertrain warranty provides coverage for 5 years or 60,000 miles, whichever occurs first.
3. Respondent also provides an Emissions Defect Warranty and an Emissions Performance Warranty in compliance with federal requirements. These warranties provide coverage for 2 years or 24,000 miles, and certain emissions parts are covered for 8 years or 80,000 miles.
4. Complainant took the vehicle to Ford for repair as shown below:

Date	Miles	Issue
01/15/2022- 01/21/2022	34,562	Check engine light on; light off at dealership; no work performed
01/24/2022- 02/10/2022	34,562	Vehicle not starting. Tune up performed; spark plugs replaced; fuel injection and air induction service performed; reprogrammed PCM; 02 downstream sensor replaced
10/13/2022- 11/17/2022	45,226	Hard shifting with transmission; check engine light on. Transmission assembly and catalytic converter replaced; reprogrammed PCM
09/07/2023 FSE Inspection	55,261	Powertrain alerts; shifting concerns; vehicle will not start at times.

²⁶ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

5. On November 11, 2022, Complainant filed a complaint with the Texas Department of Motor Vehicles (Department) alleging emissions and transmission issues with the vehicle. Specifically, the complaint alleged that the transmission shifts excessively hard between gears and that emissions issues still exist despite the replacement of the O2 sensors twice in one month and replacement of the catalytic converter.
6. On November 14, 2022, the Department sent a copy of the complaint to Respondent providing written notice of the alleged defects.
7. On April 19, 2023, 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.
8. 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.
9. On July 27, 2023, a hearing on the merits was convened before OAH Chief Hearings Examiner Bennie Brown. Complainant appeared and represented himself. Respondent appeared electronically through its representative Anthony Gregory.
10. The hearing concluded the same day, but the parties agreed to abate the case for 45 days to attempt to diagnose and repair the subject vehicle and to submit additional evidence. The issue was not resolved, and the abatement was lifted. The record closed on September 13, 2023. However, the record was reopened to allow further evidence and closed on October 4, 2023.
11. On October 26, 2021, Complainant was involved in a minor no-fault accident. The vehicle was taken to Service King for body repair.
12. On November 11, 2021, Complainant received a notification from his Ford Pass application that the vehicle had a fault with the O2 sensor.
13. After the body repair was complete, the vehicle would not start.
14. Although Service King did not perform any mechanical work on the vehicle, Service King had the O2 downstream sensor replaced with a Ford part to resolve the no-start issue. The spark plugs were also cleaned.
15. On January 15, 2022, Complainant took the vehicle to Mac Haik Ford (Mac Haik) for diagnostics. While at the dealership, the vehicle would not start.

16. Mac Haik performed a tune-up, replaced the spark plugs, replaced the O2 upstream sensor and performed a fuel injection and air induction service. The repairs were completed on February 14, 2022.
17. A couple of weeks later, the vehicle began shifting hard between gears.
18. In September 2022, the vehicle continued shifting hard between gears, the check engine light came on, and the Ford Pass application advised that the catalytic converter and transmission were malfunctioning.
19. The vehicle was taken in for service on October 13, 2022. The catalytic converter and transmission were replaced.
20. On December 10, 2022, the Ford Pass application advised that there was a powertrain malfunction.
21. On February 14, 2023, the vehicle slipped out of gear, the transmission jerked, the engine light came on, and the vehicle shut off. The Ford Pass application recommended taking the vehicle in for service immediately.
22. No loaner cars were available from Mac Haik, and the vehicle was not taken in for service.
23. On June 23, 2023, the check engine light came on, and the Ford Pass application displayed a service engine light warning, advising of issues with the evaporative emissions system.
24. At the hearing on the merits on July 27, 2023, the vehicle's mileage was 53,742 miles.
25. Complainant testified at the hearing that the vehicle fails to start after being filled with a fresh tank of gas.
26. During the inspection at the hearing, the engine came light came on when the vehicle was started, and the Ford Pass application sent a notification to service the engine soon. The details indicated that a concern was detected with the evaporative emissions system.
27. After the hearing on the merits, the parties agreed to have the vehicle inspected by a field service engineer (FSE). The FSE inspection took place on September 7, 2023, and the vehicle's mileage was 55,261 miles.
28. During the FSE inspection, it was determined that the check engine light had been triggered by Diagnostic Trouble Code (DTC) P0496 which relates to purge valve emissions. The technician determined that the purge valve was seized and could not be commanded to move with the scan tool. The recommended correction was replacement of the purge valve.
29. The purge valve is related to emissions and is covered under the vehicle's bumper-to-bumper, 3-year, 36,000-mile warranty.

30. The vehicle had 53,742 miles on the day of the hearing and is no longer covered by the bumper-to-bumper warranty.
31. The vehicle's Emissions Defect Warranty and Emissions Performance Warranty provide coverage for the evaporative emission control system for 2 years or 24,000 miles, whichever occurs first.
32. The evaporative emission control system is no longer covered by the Emissions Defect Warranty and the Emissions Performance Warranty.
33. The Emissions Defect Warranty and the Emissions Performance Warranty extend the warranty coverage for 8 years or 80,000 miles for the following parts: catalytic converters, *electronic* emissions control unit, and onboard emissions diagnostic devices, including Battery Energy Control Module (BECM).
34. There was insufficient evidence to show that the extended coverage period for the Emissions Defect Warranty and the Emissions Performance Warranty apply to replacement of the purge valve.
35. The purge valve is not covered by the vehicle's powertrain warranty.
36. The purge valve is not covered by a manufacturer's warranty.
37. At the FSE inspection, the vehicle was also evaluated for failing to start at times.
38. The vehicle was started ten times and started every time with no prolonged crank. The no start issue could not be duplicated.
39. During the inspection at the hearing, the vehicle started without difficulty.
40. The general no start issue has been resolved.
41. No evidence was offered of an inspection or diagnosis for the vehicle failing to start after being filled with gasoline.
42. There is insufficient evidence that the vehicle's failure to start after being filled with gasoline is a warrantable manufacturing defect.
43. At the FSE inspection, the vehicle's transmission shifted smoothly and no concerns were noted.
44. The hard shifting and knocking issue with the transmission has been resolved.
45. The transmission shaking while idling issue was not listed in the complaint nor was it raised at the hearing.

46. The shaking issue is a separate occurrence and was not timely raised in the complaint or at the hearing.
47. The shaking while idling issue does not qualify for relief.

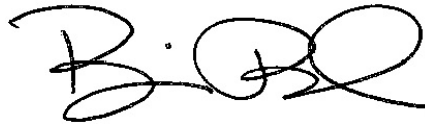
V. CONCLUSIONS OF LAW

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. 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. Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. Complainant failed to prove, by a preponderance of the evidence, that the subject vehicle has a defect covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Complainant is not entitled to relief pursuant to Texas Occupations Code § 2301.204.

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for warranty repair relief pursuant to Texas Occupations Code § 2301.204 is **DISMISSED**.

SIGNED December 4, 2023

A handwritten signature in black ink, appearing to read 'B. Brown', written over a horizontal line.

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