

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 23-0006852 CAF**

**KYLA ROSS,  
Complainant**

**v.**

**GENERAL MOTORS, LLC,  
Respondent**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Kyla Ross (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 General Motors, LLC (Respondent). A preponderance of the evidence shows that Complainant's vehicle does not qualify for repurchase relief but does qualify for repair of the dash warning lights issue.

**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 on the merits 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 herself. Respondent appeared through its representative Kevin Phillips. 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. The issue was not resolved, and the abatement was lifted. The record closed on September 11, 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.<sup>1</sup> If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.<sup>2</sup> 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.<sup>3</sup> The complaint filed with the Department identifies the relevant issues to address at the hearing.<sup>4</sup> The Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.<sup>5</sup> Failure to prove even one required fact results in denial of relief.

In this case, Complainant is seeking repurchase of the subject vehicle.

### A. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.<sup>6</sup> 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).<sup>7</sup> 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

---

<sup>1</sup> Tex. Occ. Code § 2301.603(a).

<sup>2</sup> Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

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

<sup>4</sup> 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.

<sup>5</sup> 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.”).

<sup>6</sup> Tex. Occ. Code § 2301.603

<sup>7</sup> Tex. Occ. Code § 2301.604.

- 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.<sup>8</sup>

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

### **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.<sup>9</sup>

### **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.<sup>10</sup> 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.”<sup>11</sup>

#### **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

---

<sup>8</sup> Tex. Occ. Code § 2301.604(a).

<sup>9</sup> Tex. Occ. Code § 2301.601(4).

<sup>10</sup> *Dutchmen Manufacturing, Inc. v. Texas Dep’t of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App. – Austin 2012).

<sup>11</sup> *Id.*

an owner to present an expert witness or any technical or market-based evidence to show decreased value.”<sup>12</sup> Instead, under this standard, factfinders “should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”<sup>13</sup>

### **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.<sup>14</sup>

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.<sup>15</sup>

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:

---

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Tex. Occ. Code § 2301.605(a)(1).

<sup>15</sup> Tex. Occ. Code § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup>

#### **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;<sup>20</sup>

---

<sup>16</sup> Tex. Occ. Code § 2301.605(a)(3).

<sup>17</sup> Tex. Occ. Code § 2301.605(c).

<sup>18</sup> *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.’”).

<sup>19</sup> *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.”).

<sup>20</sup> 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;<sup>21</sup> 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.<sup>22</sup>

## 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.<sup>23</sup> 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.<sup>24</sup> However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."<sup>25</sup>

---

<sup>21</sup> 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.

<sup>22</sup> Tex. Occ. Code § 2301.606(d).

<sup>23</sup> Tex. Occ. Code § 2301.604(a).

<sup>24</sup> 43 Tex. Admin. Code § 215.209(a).

<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

**III. DISCUSSION****A. Summary of Complainant’s Evidence and Arguments****1. Complainant**

On September 11, 2021, Complainant purchased a new 2021 Buick Encore GX from Ewing Buick GMC, a franchised dealer of Respondent, in Plano, Texas. The vehicle had 1,819 miles on the odometer at the time of purchase.<sup>28</sup>

The new vehicle’s limited warranty provides bumper-to-bumper coverage for 3 years or 36,000 miles, whichever occurs first, and powertrain coverage for 5 years or 60,000 miles, whichever occurs first.<sup>29</sup> The warranty “covers repairs to correct any vehicle defect related to

---

<sup>26</sup> 43 Tex. Admin. Code § 215.208(e).

<sup>27</sup> Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

<sup>28</sup> Complainant Ex. 6.

<sup>29</sup> Respondent Ex. 1.

materials or workmanship occurring during the warranty period, excluding slight noise, vibrations, or other normal characteristics of the vehicle.”<sup>30</sup>

On December 9, 2022, Complainant sent written notice to Respondent of issues with the brakes squealing and error codes displaying on the dash.<sup>31</sup> On February 28, 2023, Complainant filed a Lemon Law complaint with the Department alleging that the front brakes squeal loudly and the back brakes “moan” with a low grinding sound coming from the rear wheels. The complaint also alleged that random codes appear on the dash advising to service the brakes and to check “ESC.” 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:<sup>32</sup>

Date	Miles	Issue
04/23/2022	7,398	Noise coming from front brakes when braking; parts ordered
04/30/2022	7,772	Noise coming from front brakes when braking; front brake pads and sensors installed; molykote grease applied
08/08/2022	11,194	Check power steering and service ESC lights on dash; unable to duplicate; no work performed
10/03/2022	14,500	Brakes squealing louder; found noise was normal; no work performed
01/03/2023	19,523	Brakes squealing; brake warning light and service ESC and traction control lights on dash; removed and reinstalled front brake disc pads; dash lights unable to be duplicated
03/02/2023	22,818	Brakes squealing; unable to duplicate; resurfaced rotors for customer satisfaction; issue corrected. Service ESC light on a couple times a week; power steering warning light and traction

---

<sup>30</sup> Respondent Ex. 1.

<sup>31</sup> Complainant Ex. 5.

<sup>32</sup> Complainant Ex. 4.



		control light; found code C0051 stored in power steering control module; reprogrammed power steering module; warning light issue corrected.
--	--	---

Complainant testified that approximately one month after purchasing the vehicle, the brakes began to squeal. She initially attributed the squeal to cooler weather, but the squeal gradually became louder. She took the vehicle in for service on April 23, 2022. The concern was duplicated, and it was determined that the noise was coming from the front brakes. A brake kit and brake pad wear sensor were ordered pursuant to Bulletin 20-NA-079. The parts were received, and molykote grease was applied on April 30, 2022. Approximately one month after the repair, Complainant discovered a nail in her tire. She took the vehicle to her mechanic, Hannan Orrell. After removing the tire, Mr. Orrell noticed that the molykote grease was excessive and slathered on the calipers.

Complainant testified that the brake squeal became louder, but she did not take the vehicle in for service until warning lights appeared on her dash. The “service ESC” and “check power steering” lights intermittently illuminated on the dash along with the traction control icon. She took the vehicle in for service on August 8, 2022, but no stored codes were found. No work was performed.

The brake squealing continued to become louder and could be heard even if the brakes were not being applied. Complainant took the vehicle in for service on October 3, 2022, and advised that the squealing noise became louder after the lubricant had been applied. Complainant was advised that the brake noise was normal per Bulletin 22-NA-095. No work was performed.

On January 3, 2023, the vehicle was taken in for service due to the brake squealing noise and warning lights on the dash. Specifically, the brake warning light, service ESC, and the traction control icon intermittently illuminated. The original front brake disc pads were removed and reinstalled. Grease was applied to the caliper retainers, and the front pads were deglazed. The technician noted that some brake noise was a normal characteristic of the brake system. No codes were found regarding the warning lights, and the concern was unable to be duplicated.

Complainant filed the Lemon Law complaint, and the vehicle was inspected by a field service engineer on March 2, 2023, for brake squealing and lights on the dash. The rotors were resurfaced for customer satisfaction. Code C0051 was found stored in the power steering control module, and the module was reprogrammed per Bulletin 21-NA-177.

Complainant testified that after the March 2023 visit, the brake squealing noise diminished but is still as loud as it was when it first started. She described it as a low, intermittent squealing. On July 21, 2023, Complainant obtained a code reader and found three codes. She advised that the service ESC and power steering lights still illuminate intermittently. The vehicle currently has approximately 31,000 miles on the odometer.

Complainant confirmed that no insurance claims have been filed for the vehicle relating to fire, flood, hail, etc. There has never been any interior or undercarriage damage to the vehicle. Complainant stated that she almost always engages the parking brake when parking.

Complainant believes the vehicle is unsafe as the brake noise and code issues have never been resolved. She requests that the vehicle be repurchased by Respondent.

## **2. Aaron Stewart**

Mr. Stewart testified that he is the secondary driver of the subject vehicle. He testified that he heard noises from the vehicle, such as brakes squealing, almost to the point of grinding. The noise was heard almost every day, during all times of the day. He noticed an improvement in the noise after the vehicle was inspected in March 2023; however, the issue has not been resolved and is still present.

Mr. Stewart also testified that he observed the dash lights illuminate while driving. Specifically, he saw the service ESC light, the power steering light, and the traction control icon on the dash. He explained that there was no variation in driving, temperature, or weather that

triggered the codes. He believes these issues are a safety concern. He confirmed that he is not a trained service technician and does not hold any certifications related to servicing vehicles.

### **3. Hannan Orrell**

Mr. Orrell testified that the subject vehicle had a nail in the tire and he removed the tire. While doing so, he observed excessive grease slathered all over the brake caliper area. He never rode inside the vehicle.

### **B. Vehicle Inspection**

Upon inspection at the hearing, the subject vehicle's odometer displayed 31,214 miles. Mr. Stewart drove the vehicle during the first test drive. Three hard stops were made, and no brake noise was observed. Two stops were made in reverse, and no brake noise was observed. No dash lights illuminated during the test drive.

Lee Williams, Field Service Engineer for Respondent, drove the vehicle during the second test drive. No braking noise was observed while stopping in reverse. No braking noise was observed while traveling forward or stopping or while going over speed bumps in the parking lot. Mr. Williams inspected the brake fluid level and found it to be normal. He also inspected all four wheels and did not observe excessive grease on the calipers. The vehicle's odometer displayed 31,217 miles at the end of the test drive.

Following the test drive, Mr. Williams ran a diagnostic test on the vehicle with his laptop. He observed an after-market device in the port for the diagnostic link connector. Mr. Williams advised that after-market devices can cause false codes. He removed the device prior to running the diagnostic test. The first code presented, B1447, refers to the back-up power source in the telematics control module for the OnStar system. Code U0415 refers to invalid data received from the brake control module, and code C0051 refers to the steering wheel angle sensor signal set in the power steering control module. These codes were stored in history and did not appear to be current.

## C. Summary of Respondent's Evidence and Arguments

### 1. Kevin Phillips

Mr. Phillips summarized the vehicle's repair history and noted that the vehicle's last warrantable repair was on March 2, 2023. He explained that the first time the vehicle came in for the brake noise issue was on April 23, 2022, and the mileage was 7,398 miles. Special parts had to be ordered and once received, the vehicle was serviced on April 30, 2022. Mr. Phillips stated that this really only constitutes one repair since parts had to be ordered before any work could be performed on the vehicle. Nevertheless, both April 2022 repair orders refer to Bulletin 20-NA-079 which states that "squeal noise can occur during light brake pedal application at low vehicle speed when the brakes are first applied or lightly applied, such as exiting a parking lot."<sup>33</sup> The bulletin also noted that "[s]ome brake noises are normal characteristics of all brake systems. These noises cannot be avoided and may not indicate improper operation of the brake system."<sup>34</sup> Pursuant to the bulletin recommendations, molykote grease was applied, and the brake pads and sensors were replaced.

The next brake service work was performed on January 3, 2023, pursuant to Bulletin 22-NA-095 which recommended removing and reinstalling the front brake disc pads and applying grease. Mr. Phillips noted that the vehicle warranty specifically excludes slight noise, vibrations, or other normal characteristics. He argued that the brake noise in this case is just a normal characteristic of the brake system as noted in Bulletins 20-NA-079 and 22-NA-095.

Mr. Phillips offered Bulletin 21-NA-177 which addresses the Service Power Steering message on the vehicle. The bulletin advises that the message may illuminate but no driving or steering related issues will be present. In addition, code C0051 may be stored in the power steering control module or in recent history. The cause of the condition may be software anomalies, and the issue may be corrected by reprogramming the power steering module.<sup>35</sup>

---

<sup>33</sup> Respondent Ex. 1 at 8.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 20.

Mr. Phillips also noted that the purchase price of the vehicle listed in the sales contract included gap insurance and theft guard. He argued that these amounts should be excluded from any repurchase calculations as they are considered insurance and not eligible for reimbursement.

## **2. Lee Williams**

Mr. Williams is employed as a Field Service Engineer with Respondent. He has over 20 years' experience in the automotive industry and holds an Automotive Service Excellence (ASE) master certification and a General Motors master certification.

Mr. Williams testified regarding his inspection of the vehicle on March 2, 2023.<sup>36</sup> During the inspection, he confirmed that noise from the brake system was present on cold braking applications during parking lot maneuvers. He requested a cold start and heard noise from the front of the vehicle in the parking lot. However, the noise was gone by the time he drove to the first stop sign. He noted that the brake rotors were glazed and required resurfacing. All four rotors were resurfaced for customer satisfaction, and the brake noise was corrected. He did not observe any excessive grease at that time, and he did not consider the brake noise to be abnormal.

He confirmed that the owner's manual for the subject vehicle indicates that some driving conditions or climates can cause the brakes to squeal when first applied. However, it usually clears up after several brake applications and does not mean something is wrong with the brakes.<sup>37</sup> Mr. Williams agreed with this statement.

Mr. Williams also noted that the service ESC light was activated on the vehicle during the March 2, 2023, inspection. The power steering control module was reprogrammed pursuant to Bulletin 5879580. He performed a visual inspection and did not observe any damage. After reprogramming, the Diagnostic Trouble Code (DTC) C0051 was no longer present. The vehicle was road-tested, and no warning lights appeared.

---

<sup>36</sup> Respondent Ex. 1 at 16.

<sup>37</sup> *Id.* at 26.

Mr. Williams reviewed a scan report offered by Complainant.<sup>38</sup> The report was dated July 21, 2023, and revealed three codes. Mr. Williams explained that the first code, B3109, was stored in history and referred to the keyless entry of the vehicle. This code indicates that the battery for the key fob is low. The second code, B1447, referred to telematics and the back-up power source for the vehicle's OnStar service. The third code, U0151, referred to lost communication with the restraint module for airbags. He explained that these types of codes are common when after-market devices are plugged into the vehicle. For example, when the vehicle is turned off, the modules go to sleep and are offline. However, the after-market devices keep the modules awake or cause them to lose communication with each other and send error codes. He noted that this can cause communication issues while driving and can even trigger warning messages on the dash.

Mr. Williams also testified regarding the codes observed during the vehicle inspection at the hearing. The first code, B1447, is the backup power source for the OnStar control module as noted above. He also observed two codes stored in history for the power steering module. Code U0415 refers to invalid data received from the brake control module. He believes this was a communication error between the two modules due to an outside influence. The second code, C0051, refers to the steering wheel angle sensor signal set in the power steering control module. Mr. Williams stated he would need to conduct further testing to determine if that code was a true communication error or if it was caused by an outside influence such as the after-market device. He explained that since no warning lights were activated on the dash, these codes are not current issues and should reset after a certain number of ignition cycles.

Mr. Williams testified that he has the required training and experience to determine if a vehicle has a manufacturing defect. In his opinion, the subject vehicle was conformed to the new vehicle limited warranty on March 2, 2023, and does not have a manufacturing defect. He added that all vehicles make some noise. Complainant's concerns would not deter him from purchasing the subject vehicle.

---

<sup>38</sup> Complainant Ex. 1.

**D. Analysis**

Complainant had the burden of proof to show that the subject vehicle qualified for relief. To qualify for repurchase relief, Complainant must prove, by a preponderance of the evidence, the following elements: (1) the alleged defect is covered under Respondent's warranty; (2) the defect causes either a serious safety hazard or a substantial impairment of use or value; and (3) the vehicle has had a reasonable number of repair attempts. Failure to prove even one required fact results in the denial of relief. Based on the evidence presented, Complainant failed to establish the facts necessary for repurchase relief.

Lemon Law relief does not apply to all problems that may occur with a vehicle but only to those that are covered by warranty and continue to exist (i.e., currently exist) after repairs.<sup>39</sup> The Lemon Law requires a respondent to conform its vehicles to whatever coverage the warranty provides. In this case, the warranty "covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period, excluding slight noise, vibrations, or other normal characteristics of the vehicle."<sup>40</sup> According to these terms, the warranty only applies to manufacturing defects.

**1. Brake Noise**

Complainant testified that the vehicle's brakes intermittently emit a low squealing noise. Complainant argues that this is an abnormal occurrence and constitutes a manufacturing defect. However, Respondent's warranty and Bulletins 20-NA-079 and 22-NA-095 all indicate that some brake noises/squeals are normal characteristics of the brake system and do not indicate improper operation of the brake system.<sup>41</sup> In addition, slight noise, vibrations, or other normal characteristics of the vehicle are specifically excluded from coverage under the vehicle's warranty.<sup>42</sup>

---

<sup>39</sup> Tex. Occ. Code §§ 2301.603(a), 2301.604(a); Tex. Occ. Code § 2301.204.

<sup>40</sup> Respondent Ex. 1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

The brake noise was not present during the vehicle inspection at the hearing. Mr. Williams testified that during his inspection in March 2023, the noise disappeared by the time he exited the parking lot and came to the first stop sign. He stated that some brake noise is normal and does not constitute a warrantable defect. In this case, the noise does not affect the functionality of the brake system nor does it cause the brake system to operate improperly. The brake system stops the vehicle upon application of the brake pedal. Therefore, the intermittent brake noise does not constitute a warrantable manufacturing defect and does not qualify for relief.

## **2. Dash Warning Lights**

Complainant also testified that random warning lights appear on the dash of the vehicle while driving. Specifically, the brake warning light, service ESC, and the traction control icon intermittently illuminate. Complainant argues that the warning lights and stored trouble codes are the result of substantial electrical issues which constitute a manufacturing defect.

Mr. Williams noted that these types of codes are common when after-market devices are plugged into the vehicle and these devices can cause communication issues and trigger warning messages. He also explained that trouble codes may be stored in the vehicle history, but if no warning lights are triggered, the issues are not current. After reprogramming the power steering control module on March 2, 2023, the service ESC light was no longer present. No warning lights illuminated during the vehicle inspection at the hearing. But Complainant testified that the dash warning lights continue to illuminate intermittently and that the issue has not been resolved.

It is undisputed that the subject vehicle's bumper-to-bumper warranty is still in effect. However, the preponderance of the evidence fails to show that the intermittent dash warning lights or stored codes create a serious safety hazard or a substantial impairment of use or value. There is no evidence that the vehicle operates abnormally before, during, or after the warning lights illuminate. Nor is the intended normal operation of the vehicle hampered. Therefore, this issue does not qualify for repurchase or replacement.



However, the issue does qualify for repair relief since the vehicle is still covered under Respondent's warranty, written notice was provided to Respondent before the warranty's expiration, and a complaint was filed with the Department specifying the defect.<sup>43</sup> Respondent has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable. . . express warranty."<sup>44</sup>

For these reasons, the Hearings Examiner finds that Complainant's request for repurchase of the subject vehicle is denied. However, repair of the dash warning lights issues is granted.

#### IV. FINDINGS OF FACT

1. On September 11, 2021, Kyla Ross (Complainant) purchased a new 2021 Buick Encore GX from Ewing Buick GMC, a franchised dealer of General Motors, LLC (Respondent), in Plano, Texas.
2. The vehicle had 1,819 miles on the odometer at the time of purchase.
3. The new vehicle's limited warranty provides bumper-to-bumper coverage for 3 years or 36,000 miles, whichever occurs first, and powertrain coverage for 5 years or 60,000 miles, whichever occurs first.
4. The new vehicle limited warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period, excluding slight noise, vibrations, or other normal characteristics of the vehicle.
5. Approximately one month after purchasing the subject vehicle, the vehicle's brakes began to squeal intermittently.
6. In August 2022, the "service ESC" and "check power steering" lights intermittently illuminated on the dash along with the traction control icon.
7. Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
04/23/2022	7,398	Noise coming from front brakes when braking; parts ordered

---

<sup>43</sup> Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

<sup>44</sup> Tex. Occ. Code § 2301.603(a).

04/30/2022	7,772	Noise coming from front brakes when braking; front brake pads and sensors installed; molykote grease applied
08/08/2022	11,194	Check power steering and service ESC lights on dash; unable to duplicate; no work performed
10/03/2022	14,500	Brakes squealing louder; found noise was normal; no work performed
01/03/2023	19,523	Brakes squealing; brake warning light and service ESC and traction control lights on dash; removed and reinstalled front brake disc pads; dash lights unable to be duplicated
03/02/2023	22,818	Brakes squealing; unable to duplicate; resurfaced rotors for customer satisfaction; issue corrected. Service ESC light on a couple times a week; power steering warning light and traction control light; found code C0051 stored in power steering control module; reprogrammed power steering module; warning light issue corrected.

8. On December 9, 2022, Complainant sent written notice to Respondent of issues with the brakes squealing and error codes displaying on the dash.
9. On February 28, 2023, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging that the front brakes squeal loudly and the back brakes “moan” with a low grinding sound coming from the rear wheels. The complaint also alleged that random codes appear on the dash advising to service the brakes and to check “ESC.”
10. The Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the alleged defect.
11. On May 3, 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.
12. 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.

13. On July 27, 2023, a hearing on the merits convened in Carrollton, Texas, before OAH Chief Hearings Examiner Bennie Brown. Complainant appeared and represented herself. Respondent appeared through its representative Kevin Phillips. 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. The issue was not resolved, and the abatement was lifted. The record closed on September 11, 2023
14. The vehicle's odometer displayed 31,214 miles at the time of the hearing.
15. The vehicle's bumper-to-bumper warranty was in effect at the time of the hearing.
16. No brake noise was observed during the vehicle inspection at the hearing.
17. Respondent's service Bulletins 20-NA-079 and 22-NA-095 indicate that some brake noises are normal characteristics of the brake system and may not indicate improper operation of the brake system.
18. Slight noise, vibrations, or other normal characteristics of the vehicle are specifically excluded from coverage under the vehicle's warranty.
19. The intermittent brake noise does not affect the functionality of the brake system nor does it cause the brake system to operate improperly.
20. No dash warning lights were illuminated during the vehicle inspection at the hearing.
21. At the inspection, Diagnostic Trouble Codes (DTC) were found in the vehicle history relating to the power steering module and the backup power source for the OnStar control module.
22. An after-market device was plugged into the vehicle at the time of the inspection but removed prior to the diagnostic test.
23. After-market devices can cause communication errors and trigger warning codes.
24. There is no evidence that the vehicle operates abnormally before, during, or after the dash warning lights illuminate or that the vehicle's intended function is hampered.
25. The intermittent dash warning lights do not affect the safe operation of the vehicle and do not create a serious safety hazard.
26. The dash warning lights are intermittent and do not substantially impair the vehicle's use or value.
27. Complainant provided written notice of the dash warning lights issue to Respondent prior to the expiration of the vehicle's warranty.

## V. CONCLUSIONS OF LAW

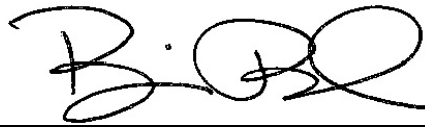
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation 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. Complainant failed to show, by a preponderance of the evidence, that the subject vehicle has a manufacturing defect that either creates a serious safety hazard or a substantial impairment of use or value, and the defect continues to exist after a reasonable number of repair attempts. Tex. Occ. Code § 2301.604(a), .605.
8. Complainant's vehicle qualifies for warranty repair of the dash warning lights issue. Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.202(b)(1),(3).
9. Respondent remains responsible to address and repair or correct any defects covered by Respondent's warranty. Tex. Occ. Code § 2301.603.

## VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, Respondent shall repair or resolve the dash warning lights issue. Upon this Order becoming final under Texas Government

Code § 2001.144:<sup>45</sup> (1) Complainant shall deliver the vehicle to Respondent within 20 days; and (2) Respondent shall complete the repair of the vehicle within **20 days** after receiving the vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle cause the failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(c).

**SIGNED November 7, 2023**



---

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

---

<sup>45</sup> 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.