

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0012591 CAF**

**RAJAT BARUA,
Complainant**

v.

**GENESIS MOTOR AMERICA LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Rajat Barua (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 Genesis Motor America LLC (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 September 11, 2023, in Houston, Texas, before Hearings Examiner Lindy Hendricks with the Department’s Office of Administrative Hearings (OAH). The Complainant appeared in person and represented himself. Respondent appeared by videoconference through its representative Susan Lucas. The hearing concluded the same day, but the record was held open until September 15, 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 The complaint filed with the Department identifies the relevant issues to address at the hearing.⁴ The 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 repurchase of the subject vehicle.

A. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.⁶ 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).⁷ A vehicle qualifies for repurchase or replacement if all the following conditions are met:

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 § 2301.603

⁷ Tex. Occ. Code § 2301.604.

- 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.⁸

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.⁹

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.¹⁰ 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.”¹¹

⁸ Tex. Occ. Code § 2301.604(a).

⁹ Tex. Occ. Code § 2301.601(4).

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

¹¹ *Id.*

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.”¹² 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.”¹³

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.¹⁴

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.¹⁵

¹² *Id.*

¹³ *Id.*

¹⁴ Tex. Occ. Code § 2301.605(a)(1).

¹⁵ Tex. Occ. Code § 2301.605(a)(2).

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

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

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.¹⁷

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.¹⁸ 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.¹⁹

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;²⁰

¹⁶ Tex. Occ. Code § 2301.605(a)(3).

¹⁷ Tex. Occ. Code § 2301.605(c).

¹⁸ *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.’”).

¹⁹ *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.”).

²⁰ 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;²¹ 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.²²

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

²¹ 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.

²² Tex. Occ. Code § 2301.606(d).

²³ Tex. Occ. Code § 2301.604(a).

²⁴ 43 Tex. Admin. Code § 215.209(a).

²⁵ 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.²⁶ 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.²⁷

III. DISCUSSION

A. Summary of Complainant’s Evidence and Arguments

On July 29, 2022, Complainant purchased a new 2022 Genesis GV70 vehicle from Genesis of Southwest Houston, a franchised dealer of Respondent, in Houston, Texas.²⁸ The purchase price of the vehicle was \$56,138.66, including tax, title, license, and registration.²⁹ The vehicle had 17 miles on the odometer at the time of purchase.³⁰

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.³¹ The new vehicle limited warranty “[c]overs repair or replacement of any component

²⁶ 43 Tex. Admin. Code § 215.208(e).

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

²⁸ Complainant Exhibit 1.

²⁹ *Id.*

³⁰ *Id.*

³¹ Complainant Exhibit 3 at 16.

manufactured or originally installed by Hyundai Motor Company or Hyundai Motor Group that is found to be defective in material or workmanship under normal use and maintenance.”³²

On June 14, 2023, Complainant filed a Lemon Law complaint (complaint) with the Department alleging that the vehicle would shake and vibrate when accelerating at highway speed.³³ The car was in the shop at the time of the complaint, and mileage was approximately 6,606 miles. On June 21, 2023, Complainant provided written notice of the alleged defects to Respondent which included a prior email communication on April 3, 2023, about the issues.³⁴

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

Date	Miles	Issue
03/30/2023 ³⁵	5,327	Engine noise. Vehicle shaking when accelerating.
05/05/2023 ³⁶	6,338	The vehicle loses power on acceleration.
05/08/2023 ³⁷ to 07/12/2023	6,606	Check engine light is on again. The vehicle is lacking power and cutting out.
	6,606	Vehicle had loss of power. Misfire still present while moving but not idle. ³⁸
	6,715	Check engine light is on again. The vehicle is lacking power and cutting out. ³⁹

³² *Id* at 18.

³³ A copy of the Lemon Law complaint was filed with the Department as part of the administrative record, of which official notice was taken.

³⁴ Complainant Exhibit 4.

³⁵ Complainant Exhibits 9 and 5.

³⁶ Complainant Exhibit 8.

³⁷ Complainant Exhibit 5. The vehicle was at Crain Fayetteville for repairs from May 8, 2023, to July 12, 2023. During that time, in addition to the initial work order (Exhibit 5), two invoices were created: Exhibit 6 dated June 2, 2023, at 6,606 miles; and Exhibit 7 dated June 12, 2023, at 6,715 miles.

³⁸ Complainant Exhibit 6.

³⁹ Complainant Exhibit 7.

Complainant testified that after he purchased the vehicle in July 2022, he drove mostly in the city for the first 6 months. On a trip to Arkansas in March 2023, Complainant noticed the vehicle shook and vibrated when he accelerated to about 50 miles per hour on the highway. On March 27, 2023,⁴⁰ Complainant brought the vehicle to the Genesis dealership in Fayetteville, Arkansas, (Crain Fayetteville) and spoke with service advisor Nathan Anderson about the issues. Crain Fayetteville performed a standard 6-month service but did not find any problems. On March 30, 2023, the vehicle was returned to Complainant. When Complainant drove the vehicle over the weekend, he experienced shaking when accelerating.

On April 3, 2023, Complainant emailed Nathan to explain that the vehicle was still shaking. Complainant was unable to get an appointment with Crain Fayetteville, and they did not have a loaner vehicle available in April.⁴¹ According to Complainant, Genesis marketed a program known as the Genesis Valet Service where Genesis would take the vehicle for service repair, provide a loaner vehicle, service the vehicle, and bring it back to the owner. However, Crain Fayetteville never had a loaner vehicle available. When Complainant called the main Genesis number, he was told that Crain Fayetteville was a small Genesis dealership and was asked if he could take the vehicle to another dealership. The closest dealership was 200 miles away in Oklahoma.

On May 5, 2023, Complainant drove the vehicle from Arkansas to Genesis of Edmond (Genesis Edmond) in Oklahoma City and met with service advisor Chris Imes. Chris immediately identified the engine problem on a test drive. Genesis Edmond ran a full diagnostic and identified issues with the fuel pump and fuel injector. Genesis Edmond replaced the fuel pump. However, they did not have the parts to replace the fuel injector and would have to order the parts, requiring an additional 2 to 3 days for repairs. Complainant could not stay in Oklahoma City for the necessary repairs. Genesis Edmonds provided a report⁴² that Complainant could take back to Crain Fayetteville, specifying that fuel injector #3 needed to be replaced. Complainant thought the report was sufficient for Crain Fayetteville to order the parts. However, when Complainant called Crain Fayetteville, he was told to bring the vehicle back for them to run their own diagnostic tests.

⁴⁰ Complainant Exhibit 9. The vehicle had 5,327 miles when the defect was first reported.

⁴¹ Complainant Exhibit 10.

⁴² Complainant Exhibit 8.

On May 8, 2023, Complainant brought the vehicle back to Crain Fayetteville but was not provided a loaner vehicle. The vehicle remained at Crain Fayetteville from May 8, 2023, to July 12, 2023. Complainant testified that Crain Fayetteville conducted a series of tests and repairs, replaced fuel injectors, but noticed more problems, as evidenced by their voice mail.⁴³ On May 10, 2023, the fuel injector part was received late in the afternoon, and Complainant was told the vehicle would be repaired and delivered to him in the morning.⁴⁴ On May 11, 2023, Nathan stated the fuel injector was replaced, but there was an issue with another fuel injector. Nathan told Complainant the vehicle ran better but was “still cutting out some” so he ordered another fuel injector and fuel line. The parts would not arrive until May 16 or May 17, 2023.⁴⁵ On May 16 and May 18, 2023, Complainant asked for an update on the repair.⁴⁶ On May 19, 2023, Nathan responded that the fuel injector was delayed another 3 to 4 days. On May 22, 2023, Complainant emailed Nathan because the vehicle had been in the shop for 2 weeks during which he did not have a loaner vehicle. Nathan responded that the fuel injector had not been received and that it should arrive any day.⁴⁷ Complainant communicated with Nathan that the Memorial Day weekend was coming up and he needed the vehicle to go to Houston. Nathan promised the vehicle would be ready the following weekend. Complainant had daily phone communications with Nathan.

On June 2, 2023, Complainant asked for update because the vehicle was expected to be repaired that day. Nathan responded that the part was getting checked in. The technician was finishing another job and would get to Complainant’s vehicle. Nathan would let him know as soon as he finished and got him the paperwork. That afternoon, Nathan wrote back that they were finishing up with the vehicle and trying to find drivers to get the vehicle to Complainant.⁴⁸ Complainant was hopeful and made plans to go back to Houston the following day. However, that evening, Complainant received a voicemail from Crain Fayetteville⁴⁹ that they had installed the

⁴³ Complainant Exhibits 14.

⁴⁴ Complainant Exhibit 11 at 4.

⁴⁵ Complainant Exhibit 11 at 3.

⁴⁶ Complainant Exhibit 11 at 2.

⁴⁷ Complainant Exhibit 11 at 1.

⁴⁸ Complainant Exhibit 29.

⁴⁹ Complainant Exhibit 14.

fuel injector and took the vehicle for a test drive. The vehicle was not accelerating properly, and there was no power to it. The technicians were trying to diagnose the problem. The caller stated Crain Fayetteville would have a rental car available for Complainant on Monday. An invoice from that date showed a “misfire still present while moving but not idle.”⁵⁰

On June 3, 2023, Complainant spoke to Evan Brunson at Crain Fayetteville because Nathan was not working the weekend. Evan stated they were trying to diagnose the vehicle. Complainant needed to travel to Houston. Although Crain Fayetteville had a loaner vehicle, it could not be driven out of state. Evan told Complainant to call Genesis Customer Care and they would reimburse him for any rental. However, Genesis Customer Care was closed for the weekend. XNA was the only car rental open with a last-minute rental.⁵¹ Evan told Complainant to book the rental for 2 weeks to allow Crain Fayetteville time to repair the vehicle. Complainant sent the rental details to Evan and asked him to confirm its approval. Evan responded that he would submit the rental agreement for approval.⁵² Complainant was told that the vehicle would be delivered to him in Houston once the repairs were done.

Between June 3 and July 12, 2023, Complainant remained in constant contact with Crain Fayetteville. He also had a series of communications with Genesis Customer Care personnel Pamela,⁵³ Terrecetia,⁵⁴ and Matthew,⁵⁵ inquiring about the status of the repairs. Complainant repeatedly inquired about the status of the repairs, delivery of his vehicle when repairs were done, and reimbursement for his rental. Complainant testified he was not told what all repairs were done. Crain Fayetteville provided some documents and repair orders, but Complainant does not believe he has all the repairs documented. During this time, Complainant contacted the Department and filed the Complaint. That prompted multiple responses from Genesis and an offer to reimburse Complainant for his rentals.

⁵⁰ Complainant Exhibit 6.

⁵¹ Complainant Exhibit 12.

⁵² Complainant Exhibit 13.

⁵³ Complainant Exhibit 15.

⁵⁴ Complainant Exhibits 16 and 17.

⁵⁵ Complainant Exhibits 18 and 19.

In July, Complainant was told the vehicle was repaired. Complainant worked with Matthew to have the vehicle delivered, as promised, by July 6, 2023, from Crain Fayetteville to Genesis West Houston, the closest retailer to Complainant. On July 6 and 7, 2023, Complainant emailed Matthew asking for an update because he needed his vehicle to drive back to Arkansas on July 8, 2023. When he did not get a response, Complainant contacted Crain Fayetteville and learned that his vehicle had not been picked up in Fayetteville. On July 7, 2023, Complainant received a voicemail from Terrecetia⁵⁶ that the vehicle had been delayed and that a rental vehicle would be covered. At this point, Complainant booked a rental car and returned to Arkansas. On July 12, 2023, Complainant picked up his vehicle from Crain Fayetteville. Complainant testified that after he received the vehicle back, the vehicle was still experiencing problems, and the vibration is still present. The vehicle has not been in an accident and does not have after-market parts installed.

According to Complainant, the problems with the vehicle persisted after he picked up the vehicle on July 12, 2023. Respondent failed to repair the vehicle after 2 months. Complainant is reluctant to bring his vehicle back for repairs and be without a vehicle for another 2 months. Complainant also observed that since repairs, the vehicle gas range is drastically lower. On a full tank of gas, the vehicle should deliver 480 miles,⁵⁷ but now it delivers about 340 to 350 miles on a full tank. Complainant testified that the engine has been compromised by all the repairs and adjustments. He testified that the defect is an impairment of the vehicle's use and also poses a serious safety hazard. Also, during the time the vehicle was being repaired, Complainant tried to get his rental costs covered. He testified that, after he filed the complaint, he received a reimbursement offer for some, but not all, of his rental fees. Complainant was reimbursed \$4,236, but he did not sign the settlement and release. Complainant testified that he discussed the matter with the Department, and, because there had been 3 attempts to repair the vehicle, it was recommended that Complainant take the matter to a hearing. Complainant asks that the vehicle be repurchased, and that he be fully compensated for his alternate transportation costs.

⁵⁶ Complainant Exhibit 20.

⁵⁷ Complainant Exhibit 28.

B. Respondent's Argument

Respondent believes there has been an unreasonable amount of repairs done to this vehicle. Respondent argues that the vehicle is still under a warranty and could be brought in for another repair. Respondent is requesting denial of the repurchase.

C. Vehicle Inspection

Upon inspection at the hearing, the subject vehicle's odometer displayed 8,948 miles. During the test drive, when accelerating to about 50 to 55 miles per hour, the vehicle exhibited a jerking or shaking sensation. The vehicle's odometer displayed 8,958 miles at the end of the test drive.

D. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief. To qualify for relief, Complainant must prove the required elements by a preponderance of the evidence. Based on the evidence presented, Complainant established the facts necessary for relief. 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 shakes while accelerating. 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 vehicle's repair history shows that the vehicle continues to have the same problem after the vehicle was out of service for repair for at least 30 days, during which time a comparable loaner vehicle was not provided. Accordingly, the vehicle meets the statutory

presumption for reasonable repair attempts. The repair attempts were made during the applicable warranty period. In addition, written notice of the defect was provided to Respondent, and Respondent was given an opportunity to cure the defect. Finally, the Lemon Law complaint was timely filed. Accordingly, repurchase relief applies in this case.

The Department's rules list the appropriate calculations for repurchase,⁵⁸ and the specific calculations are applied as follows:

Purchase price, including tax, title, license & registration	\$56,138.66
Delivery mileage	17
Mileage at first report of defective condition	5,327
Mileage on hearing date	8,948
Useful life determination	120,000
Purchase price, including tax, title, license & registration	\$56,138.66
Mileage at first report of defective condition	5,327
Less mileage at delivery	-17
Unimpaired miles	5,310
Mileage on hearing date	8,948
Less mileage at first report of defective condition	-5,327
Impaired miles	3,621
<i>Reasonable Allowance for Use Calculations:</i>	
Unimpaired miles	$5,310 \div 120,000 \times \$56,138.66 = \$2,484.14$
Impaired miles	$3,621 \div 120,000 \times \$56,138.66 \times 50\% = \846.99
Total reasonable allowance for use deduction	\$3,331.13
Purchase price, including tax, title, license & registration	\$56,138.66
Less reasonable allowance for use deduction	-\$3,331.13
Plus filing fee refund	\$35.00
Plus incidental expenses ⁵⁹	\$0.00
TOTAL REPURCHASE AMOUNT	\$52,842.53

Based on the above calculations, Respondent shall repurchase the subject vehicle in the amount of **\$52,842.53**.

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

⁵⁹ Complainant Exhibits 12, 21-27. Complainant's rental reimbursement covered all incidental fees shown on the admitted exhibits, excluding international travel and travel after the vehicle was returned on July 12, 2023.

IV. FINDINGS OF FACT

1. On July 29, 2022, Rajat Barau (Complainant) purchased a new 2022 Genesis GV70 vehicle from Genesis of Southwest Houston, a franchised dealer of Genesis Motor America (Respondent), in Houston, Texas. The vehicle was distributed by Respondent.
2. The purchase price of the vehicle was \$56,138.66, including tax, title, license, and registration.
3. The vehicle had 17 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
03/30/2023	5,327	Engine noise. Vehicle shaking when accelerating.
05/05/2023	6,338	The vehicle loses power on acceleration.
05/08/2023	6,606	Check engine light is on again. The vehicle is lacking power and cutting out.
07/12/2023	6,606	Vehicle had loss of power. Misfire still present while moving but not idle.
	6,715	Check engine light is on again. The vehicle is lacking power and cutting out.

7. On June 14, 2023, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle shook and vibrated when accelerating at highway speed.
8. On June 21, 2023, Complainant sent a letter to Respondent, providing written notice of the alleged defect.

9. On July 31, 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.
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 September 11, 2023, a hearing on the merits was convened in Houston, Texas, before OAH Hearings Examiner Lindy Hendricks. 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 September 15, 2023, to allow Complainant to submit additional evidence.
12. The vehicle's odometer displayed 8,948 miles at the time of the hearing.
13. The vehicle's warranty was in effect at the time of the hearing.
14. The vehicle shakes and jerks when accelerating at highway speed.
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 a reasonable number of repair attempts.
18. The vehicle was out of service for repair for at least 30 days, during which time a comparable loaner vehicle was not provided.
19. The repair attempts were made during the applicable warranty period.
20. Respondent was given an opportunity to cure the defect after being provided notice.
21. The Lemon Law complaint was timely filed.
22. The vehicle qualifies for repurchase relief.
23. The appropriate calculations for repurchase are as follows:

Purchase price, including tax, title, license & registration	\$56,138.66
Delivery mileage	17
Mileage at first report of defective condition	5,327
Mileage on hearing date	8,948
Useful life determination	120,000
Purchase price, including tax, title, license & registration	\$56,138.66
Mileage at first report of defective condition	5,327
Less mileage at delivery	-17
Unimpaired miles	5,310
Mileage on hearing date	8,948
Less mileage at first report of defective condition	-5,327
Impaired miles	3,621
<i>Reasonable Allowance for Use Calculations:</i>	
Unimpaired miles	5,310 ÷ 120,000 × \$56,138.66 = \$2,484.14
Impaired miles	3,621 ÷ 120,000 × \$56,138.66 × 50% = \$846.99
Total reasonable allowance for use deduction	\$3,331.13
Purchase price, including tax, title, license & registration	\$56,138.66
Less reasonable allowance for use deduction	-\$3,331.13
Plus filing fee refund	\$35.00
Plus incidental expenses ⁶⁰	\$0.00
TOTAL REPURCHASE AMOUNT	\$52,842.53

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).

⁶⁰ Complainant Exhibits 12, 21-27. Complainant's rental reimbursement covered all incidental fees shown on the admitted exhibits, excluding international travel and travel after the vehicle was returned on July 12, 2023.

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).

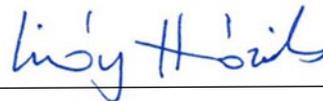
VI. ORDER

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 **\$52,842.53**. 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 § 2001.144.⁶¹ 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 October 9, 2023.



LINDY HENDRICKS
Hearings Examiner
Office of Administrative Hearings
Texas Department of Motor Vehicles

⁶¹ 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.