

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0358 CAF**

<b>KATHLEEN SCHOENSTEIN,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>AMERICAN HONDA MOTOR CO.,</b>	§	
<b>INC.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Kathleen Schoenstein (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Honda Accord. Complainant asserts that the vehicle intermittently won't start, the radio will cut out, and the radio display will turn off. American Honda Motor Co., Inc. (Respondent) argued that the vehicle is operating as designed and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant is eligible for repurchase relief.

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

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on November 9, 2015, in Fort Worth, Texas before Hearings Examiner Edward Sandoval and closed that same day. Complainant represented herself at the hearing. Also testifying for Complainant via telephone was her sister, Doreen Rihn. Respondent was represented via telephone by Chris Tatro, Mediation Specialist. Also participating in the hearing by telephone for Respondent was Simon Ng, Mediation Specialist.

**II. DISCUSSION**

**A. Applicable Law**

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>3</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>4</sup>

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

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

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(2).

In addition to these conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>5</sup>

## **B. Complainant's Evidence and Arguments**

### **1. Kathleen Schoenstein's Testimony**

Complainant purchased a 2014 Honda Accord from David McDavid Honda (McDavid), in Irving, Texas on March 8, 2014.<sup>6</sup> The vehicle's mileage was 12 at the time of delivery.<sup>7</sup> On the date of hearing the vehicle's mileage was 22,705. Respondent provided a new vehicle limited warranty for the vehicle, which provides coverage for three (3) years or 36,000 miles from the date of delivery, whichever comes first.<sup>8</sup>

Complainant testified that approximately two months after purchasing the vehicle, she experienced an incident where the vehicle would not start. Complainant was leaving work and attempted to start her vehicle by stepping on the brake and pushing the start button. The vehicle refused to start. Complainant testified that it was as if the vehicle's engine had seized up. She could not push the brake pedal down as it wouldn't move. She attempted to start the vehicle five to six times before it actually started. Once the vehicle started, Complainant's cell phone would not pair up with the vehicle's Bluetooth system and the radio display was not working. Complainant made a stop at a restaurant on the way home. She turned off the vehicle and then turned it back on. The vehicle started immediately, Complainant's cell phone paired up with the Bluetooth, and the radio display lit up.

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<sup>5</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

<sup>6</sup> Complainant Ex. 1 Retail Purchase Agreement dated March 8, 2014.

<sup>7</sup> Complainant Ex. 2, Odometer Disclosure Statement dated March 8, 2014.

<sup>8</sup> Respondent Ex. 2, Honda Warranty Manual, p. 9.

Complainant testified that she promptly took the vehicle to McDavid, Respondent's authorized dealership, for repair on May 23, 2014. Complainant indicated to the dealer's service advisor that she had two problems with the vehicle: that it would intermittently refuse to start (she also raised the issue with the Bluetooth and the radio display) and that the vehicle was leaking oil.<sup>9</sup> The dealer's service technician was unable to duplicate the concern regarding the vehicle's failure to start.<sup>10</sup> The technician did determine the source of the vehicle's oil leak which was that the rear valve cover was leaking oil.<sup>11</sup> The technician replaced the valve cover gasket in order to address the oil leak issue.<sup>12</sup> The vehicle's mileage on this occasion was 2,878.<sup>13</sup> The vehicle was in the dealer's possession for five days during this repair visit. Complainant was provided with a rental vehicle while her vehicle was being repaired. On this visit, Complainant raised the issue of the radio's sound cutting off when the vehicle refused to start.

Complainant took the vehicle from the dealer after the May 23, 2014 repair visit. On June 2, 2014, the vehicle again refused to start. She immediately took the vehicle to McDavid for repair. Complainant asked a dealer representative if they could just take the vehicle back. The representative informed Complainant that they could not, but she could talk to a salesperson about trading in the vehicle. The salesperson indicated to Complainant that there was nothing that he could do about trading in the vehicle. She assumed because of the depreciation of the vehicle due to her driving it. The dealer's service technician attempted to repair the vehicle, but could not duplicate the concern.<sup>14</sup> However, the dealer's service manager instructed the technician to adjust the vehicle's shift cable in an attempt to address the issue.<sup>15</sup> The vehicle's mileage when it was taken to the dealership on this occasion was 2,966.<sup>16</sup> Complainant could not recall if she received a rental vehicle or waited for the vehicle on this occasion. On this visit, Complainant also raised the issue of the radio's sound cutting off when the vehicle refused to start.

Complainant did not have any problems with the vehicle after this repair attempt until June 16, 2014. On this date, Complainant was at a grocery store and the vehicle wouldn't start. The brake seemed to be frozen. Complainant pushed the start button on the vehicle 19 times before it actually started. Complainant called McDavid's service advisor to come to her location to verify the problem and diagnose the vehicle in the parking lot. However, the service advisor indicated to Complainant that no one was available to go to her location. Complainant eventually was able to start the vehicle.

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<sup>9</sup> Complainant Ex. 3, Repair Order dated May 23, 2014.

<sup>10</sup> *Id.*

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

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

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

<sup>14</sup> Complainant Ex. 4, Repair Order dated June 2, 2014.

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

<sup>16</sup> *Id.*

She then took the vehicle to McDavid for repair that same day. The dealer's service technician was unable to reproduce the problem.<sup>17</sup> The technician performed a brake switch test, control unit test, checked for software updates, and tested several pinfits and connectors, but could not determine the cause of the problem.<sup>18</sup> The dealer's service advisor offered to take the vehicle for a few days to see if he could duplicate the problem. Complainant agreed to allow him to do so. In addition, Complainant testified that the service advisor indicated to her that they were going to order a recording device for the vehicle, but that never happened. The recording device was to show what was going on with the vehicle. The dealer's technician did indicate that the vehicle's computer system had a few no starts, but not to the extent that Complainant indicated that she was experiencing. In addition, Complainant testified that one of the dealer's representatives actually observed the vehicle's failure to start when she took the vehicle to the dealer for repair. The mileage on the vehicle on this occasion was 3,674.<sup>19</sup> The vehicle was in the dealer's possession for eight (8) days. Complainant was provided with a rental or loaner vehicle while her vehicle was being repaired.

Complainant testified that when the vehicle fails to start it's as if it is seizing. The vehicle's engine does not turn over. The brake pedal is elevated from its normal position and she cannot press the pedal down at all.

When the vehicle was returned to Complainant, she was informed by the dealer's representative that the problem didn't recur. She thought that the recording device was going to be ordered by the dealer and installed in the vehicle, but apparently it was never ordered.

On August 1, 2014, Complainant took the vehicle to McDavid for repair because she had experienced another situation where the vehicle refused to start. The dealer's service technician could not duplicate the problem.<sup>20</sup> However, the technician from Respondent's technical assistance center told the dealer's technician to replace the vehicle's brake switch in an attempt to resolve the issue.<sup>21</sup> The vehicle's mileage when it was delivered to the dealer on this occasion was 6,182.<sup>22</sup> The vehicle was returned to Complainant the same day.

Complainant testified that after the August 1, 2014, repair, she didn't have any other problems with the vehicle for several months, so she assumed that it had been repaired. On July 13, 2015, Complainant and her sister, Doreen Rihn, were driving around town in the vehicle for about three to

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<sup>17</sup> Complainant Ex. 5, Repair Order dated June 16, 2014.

<sup>18</sup> *Id.*

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

<sup>20</sup> Complainant Ex. 6, Repair Order dated August 1, 2014.

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

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

four hours shopping. They returned to Complainant's home to take a break and when they returned to the vehicle to go on another trip, the vehicle wouldn't start. The vehicle had to be towed to the dealership, since it wouldn't start. Complainant testified that the brake had seized up "real high" and that it was the same issue she had previously experienced. She tried for a few minutes to start the vehicle before calling a tow truck. The vehicle was taken to McDavid for repair. The dealer's service technician indicated that the vehicle's battery failed a load test and replaced it.<sup>23</sup> The vehicle's mileage on this occasion was 18,464.<sup>24</sup> The vehicle was in the dealer's possession until July 17, 2015.<sup>25</sup> Complainant testified that the issue with the vehicle was diagnosed as a bad battery cell and that she was not sure if the technician looked at anything else. She feels that replacing the brake switch on August 1, 2014, had not really addressed the concern.

Respondent performed a final repair attempt on Complainant's vehicle on September 4, 2015. The repair attempt was performed at McDavid. Complainant believes that the repair attempt was performed by a dealer technician who was working on the phone with Respondent's technician. The technician was not able to duplicate the issue raised by Complainant.<sup>26</sup> The vehicle's mileage at the time of the final repair was 20,501.<sup>27</sup> Complainant was provided with a rental vehicle while the final repair attempt was performed.

On or about September 10, 2015, Complainant was driving her vehicle and entering a pay garage during the middle of the day. She was not able to reach the parking ticket needed to gain access to the garage. Complainant shifted the vehicle to Park and the vehicle died. Complainant felt that the brake was rising while she attempted to restart the vehicle in order to enter the garage. It took her three or four attempts to restart before the engine started again and she was able to proceed. Complainant took the vehicle to McDavid for repair on September 10, 2015. However, the dealer's service technician could not duplicate the problem and no repairs were performed on the vehicle.<sup>28</sup> The vehicle's mileage on this occasion was 20,677.<sup>29</sup>

On July 24, 2015, Complainant wrote a letter to Respondent advising them of the problems with the vehicle. In addition, Complainant indicated in the letter that Respondent should contact her to arrange a date and time for inspection of the vehicle and a final repair.<sup>30</sup> Complainant filed a Lemon Law complaint to the Texas Department of Motor Vehicles (TxDMV) on August 14, 2015.<sup>31</sup>

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<sup>23</sup> Complainant Ex. 7, Repair Order dated July 13, 2015.

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

<sup>25</sup> *Id.*

<sup>26</sup> Complainant Ex. 8, Repair Order dated September 4, 2015.

<sup>27</sup> *Id.*

<sup>28</sup> Complainant Ex. 9, Repair Order dated September 10, 2015.

<sup>29</sup> *Id.*

<sup>30</sup> Complainant Ex. 11, Letter to American Honda Motor Co., Inc. dated July 24, 2015.

<sup>31</sup> Complainant Ex. 10, Lemon Law complaint dated August 14, 2015. Although the complaint was signed by Complainant on August 7, 2015, the complaint was actually received by the Texas Department of Motor Vehicles on August 14, 2015, which is the effective date of the complaint.

Complainant testified that she doesn't feel comfortable taking a trip in the vehicle by herself. She doesn't know whether the vehicle will start again whenever she turns it off. She doesn't feel that she can trade in or sell the vehicle without revealing the fact that she's had trouble with it starting at times. She feels that the vehicle's value has been diminished due to the problems she's experienced with it.

## **2. Doreen Rihn's Testimony**

Doreen Rihn is Complainant's sister. She testified that she was with Complainant on July 13, 2015, when the vehicle failed to start. Ms. Rihn and Complainant were riding in the vehicle on the date in question and made several stops while shopping. They decided to take a short break at Complainant's home. They attempted to leave the house about five to ten minutes later and Complainant's vehicle would not start. There did not seem to be any power to the vehicle. So, Complainant called the dealership which sent a tow truck to tow the vehicle to the dealer's location for repair.

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

Chris Tatro, Mediation Specialist, testified that he first became involved with Complainant's complaint when Respondent received Complainant's letter dated July 24, 2015, in which Complainant indicated that she was dissatisfied with the vehicle. Mr. Tatro contacted Complainant and a representative from McDavid to speak to them about the complaint. He also reviewed the repair orders for the vehicle to ascertain the extent of the problem. Mr. Tatro then arranged for a final repair attempt and inspection of the vehicle.

The final repair attempt was performed on September 5, 2015, at McDavid, by John Kerrigan, District Parts and Service Manager, and a dealer technician. They checked the vehicle's computer system to determine if there were diagnostic trouble codes (DTC's) stored. There were some trouble codes stored, but they were not related to the issue of the vehicle's failure to start. In addition, Mr. Kerrigan and the technician checked the vehicle's push button start log and inspected the vehicle's starter system and could not find any problems. They determined that the vehicle was operating as designed.

Mr. Tatro testified that the decision on June 2, 2014, to adjust the vehicle's shift cable was to ensure that the cable was within design specifications. It was a simple procedure and it was thought that it might help resolve the issue of the vehicle's failure to start.

Mr. Tatro was not sure why the dealer's technician indicated on the June 16, 2014, repair order that a recorder was being ordered. He thinks it was an attempt to capture a snapshot of the vehicle's systems whenever the vehicle failed to start properly, but since there were other methods to obtain the information, the recorder was not ordered. Also, Mr. Tatro stated that the DTC's showed four no start incidents. The computer keeps track of such situations. Four no start incidents are not out of the normal.

Mr. Tatro indicated that the dealer's technicians contacted Respondent's tech line for help in diagnosing Complainant's concerns about the vehicle. The tech line is a resource developed by Respondent which can aid dealer technicians in diagnosing and repairing issues. The tech line technician recommended to the dealer's technician to replace the vehicle's brake switch during the August 1, 2014, repair visit. It had been determined by the technician that the push button start was operating correctly. As a safety precaution, Respondent has designed the start system to require that the vehicle's brake is depressed and the transmission is in park before the vehicle can be started. The brake switch is inexpensive and easy to replace. So, the decision was made to replace the part to see if this addressed Complainant's concerns even though the concern had not been duplicated.

Mr. Tatro testified that the final repair attempt and inspection determined that the vehicle is operating as designed and is currently operating correctly. All components involved in starting the vehicle have been inspected and do not appear to have any problems. The dealer's technicians have not been able to recreate the issue.

Mr. Tatro also stated that complainant's use of the vehicle has not been affected. She's been able to drive the vehicle as much as any average driver. The vehicle is worth more than an average similar model. There have not been any drivability concerns with the vehicle. There have been no safety recalls for the vehicle. Mr. Tatro stated in his opinion the vehicle is safe to drive.

#### **D. Analysis**

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

Complainant purchased the vehicle on March 8, 2014, and presented the vehicle to David McDavid Honda, an authorized dealer of Respondent, due to her concerns with the vehicle failing to start, on the following dates: May 23, 2014; June 2, 2014; June 16, 2014; August 1, 2014; and July 13, 2015. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) specifies that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt." The evidence presented at the hearing establishes that Complainant has met the requirements of this test in regards to the vehicle's failure to start. (However, Complainant only raised the issue regarding the radio cutting out two (2) times. So, this issue will not be addressed further). As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with a final opportunity to cure the defect. Complainant informed Respondent via letter dated July 24, 2015, of the issues with the vehicle and providing them with an opportunity to cure of which Respondent availed themselves. The vehicle was inspected and a final repair attempt performed on September 4, 2015, by Respondent's representative who determined that no repairs were necessary at that time.

Finally, the evidence indicates that Complainant's vehicle has a defect or nonconformity which substantially impairs its use and market value. Although Respondent has indicated that the vehicle was repaired and operating normally, Complainant testified that on September 10, 2015, she was involved in an incident where the vehicle had died and then did not restart immediately. This occurred after Respondent's final repair attempt and approximately two (2) months prior to the hearing date. It is apparent given the evidence that the vehicle has not been repaired. The vehicle's intermittent starting issues make it less desirable to drive than comparable vehicles. In addition, it has caused Complainant to decide that the vehicle is not roadworthy for extended trips which can affect its marketability due to the reduced capacity for use.

Although the Respondent has been provided several opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to do so. As such, Complainant has met her burden of proof to establish a warrantable and existing defect or condition that substantially impairs the vehicle's use and market value.

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

### III. FINDINGS OF FACT

1. Kathleen Schoenstein (Complainant) purchased a new 2014 Honda Accord on March 8, 2014, from David McDavid Honda, in Irving, Texas, with mileage of 12 at the time of delivery.
2. The manufacturer of the vehicle, American Honda Motor Co., Inc. (Respondent) issued a new vehicle limited warranty for three (3) years or 36,000 miles from the date of delivery to the owner, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 22,705.
4. At the time of hearing the vehicle's basic warranty was still in effect.
5. Approximately two months after purchasing the vehicle, Complainant began experiencing a problem where the vehicle would intermittently fail to start.
6. Complainant took her vehicle to Respondent's authorized dealers in order to address her concerns with the vehicle refusing to start, on the following dates:
  - a. May 23, 2014, at 2,878 miles;
  - b. June 2, 2104, at 2,966 miles;
  - c. June 16, 2014, at 3,674 miles;
  - d. August 1, 2014, at 6,182 miles; and
  - e. July 13, 2015, at 18,464 miles.
7. Respondent, through its authorized dealers, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity in the vehicle continues to exist.
8. The defective condition of Complainant's vehicle substantially impairs its use and market value. The vehicle's intermittent failure to start makes it less desirable to drive than comparable vehicles. In addition, it has caused Complainant to decide that the vehicle is not roadworthy for extended trips which can affect its marketability due to the reduced capacity for use.

9. Complainant provided written notice of the defect to Respondent on July 24, 2015, and Respondent was given the opportunity to inspect the vehicle on September 4, 2015.
10. On August 14, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On September 14, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
12. The hearing in this case convened on November 9, 2015, in Fort Worth, Texas before Hearings Examiner Edward Sandoval and closed that same day. Complainant represented herself at the hearing. Also testifying for Complainant via telephone was her sister, Doreen Rihn. Respondent was represented via telephone by Chris Tatro, Mediation Specialist. Also participating in the hearing by telephone for Respondent was Simon Ng, Mediation Specialist.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.

6. Complainant's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
9. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to repurchase Complainant's 2014 Honda Accord. Tex. Occ. Code § 2301.604(a)(1).

**IT IS THEREFORE ORDERED that:**

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in this final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$25,189.75**. In addition, Complainant is entitled to reimbursement of the Lemon Law filing fee in the amount of **\$35.00**. The total refund of **\$25,224.75** shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$28,192.09
Delivery mileage	12
Mileage at first report of defective condition	2,878
Mileage on hearing date	22,705
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$28,192.09
Mileage at first report of defective condition					2,878
Less mileage at delivery					<u>-12</u>
Unimpaired miles					2,866
Mileage on hearing date					22,705
Less mileage at first report of defective condition					<u>-2,878</u>
Impaired miles					19,827
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
					<u>2,866</u>
	120,000	X	\$28,192.09	=	\$673.32
Impaired miles					
					<u>19,827</u>
	120,000	X	\$28,192.09	X .5	= <u>\$2,329.02</u>
Total reasonable allowance for use deduction:					\$3,002.34
Purchase price, including tax, title, license and registration					\$28,192.09
Less reasonable allowance for use deduction					-\$3,002.34
Plus filing fee refund					<u>\$35.00</u>
<b>TOTAL REPURCHASE AMOUNT</b>					\$25,224.75

3. Within twenty (20) calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);.

4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department;<sup>32</sup>
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous. Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

**SIGNED November 30, 2015.**

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

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<sup>32</sup> Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.