

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.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

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.⁵

B. Complainant's Evidence and Arguments

1. Jack Shandley's Testimony

Complainant leased a new 2017 Toyota Camry (the vehicle) from Ram Country Chrysler–Plymouth–Dodge (Ram Country) in Del Rio, Texas on April 19, 2017.⁶ At the time of the lease signing, the lease was assigned to Intervenor.⁷ The vehicle's mileage was 301 at the time of delivery.⁸ At the time of lease, Respondent issued a new vehicle limited warranty which provides

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ 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.

⁶ Complainant Ex. 3, Closed End Motor Vehicle Lease dated April 19, 2017.

⁷ *Id.*

⁸ *Id.*

bumper-to-bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first.⁹ The vehicle's mileage on the date of hearing was 10,914.

Complainant testified that almost immediately after purchasing the vehicle, he began having trouble with the cruise control. He testified that he was taking the vehicle to the dealer almost every other day for one problem or another.

The repairs performed for Complainant's vehicle are listed in the table below. Complainant testified that he never left the vehicle at the dealer overnight and that he never was provided with a loaner vehicle. All of the repairs, except the July 12, 2018 repair, were performed at Toyota of Del Rio. The July 12, 2018 repair was performed at Toyota of Boerne.

DATE	MILEAGE	ISSUE(S)	REPAIRS
2/2/18	2,278	Cruise Control intermittently not working	Unable to duplicate ¹⁰
5/17/18	3,005	Air conditioner blower too loud when set on high	Air conditioner operating as designed ¹¹
6/4/18	3,141	1. Cruise control stops working intermittently 2. The brake pedal has to be pressed halfway down before the vehicle started braking	The dealer's technician was unable to duplicate either concern ¹²
6/14/18	3,592	1. Cruise control does not always engage 2. GPS not working properly 3. Air conditioner blower makes too much noise	1. Unable to duplicate the concern with the cruise control 2. GPS worked correctly and recognized Complainant's home address 3. Air conditioner created same noise as in a similar vehicle ¹³
7/10/18	3,977	Noisy ride and tires making excessive noise	Unable to duplicate concerns ¹⁴
7/12/18	4,176	1. Squeaking noise from air conditioner	1. No noise was heard at time of repair 2. Updated software 3. Working as designed ¹⁵

⁹ Respondent Ex. 1, Respondent's Evidence Packet, p. 3.

¹⁰ Respondent Ex. 1, Repair Orders for Complainant's vehicle, pp. 3-4.

¹¹ *Id.*, p. 5.

¹² *Id.*, p. 6.

¹³ *Id.*, p. pp. 7-8.

¹⁴ *Id.*, pp. 9-10.

¹⁵ *Id.*, pp. 11-13.

		<ol style="list-style-type: none"> 2. GPS stops working and doesn't take driver to correct location 3. Gas mileage has decreased 	
7/30/18	4,469	<ol style="list-style-type: none"> 1. GPS audio not working 2. Gas mileage has decreased 3. Information display gone 	<ol style="list-style-type: none"> 1. Unable to duplicate 2. Vehicle averaging 22.4 mpg and within specifications 3. Similar vehicle had same display screens¹⁶
9/18/18	5,470	<ol style="list-style-type: none"> 1. The GPS system was inaccurate and the audio was not working 2. an informational screen was missing 3. the vehicle's gas mileage had decreased from 28 MPG to 19 MPG 4. when driving in the rain, the cruise control, windows, and electrical system stopped working 5. the vehicle's rear cross-traffic alert was not operating properly 6. the air conditioner's blower motor was making a noise when the system was set on high 7. the vehicle's tires were excessively noisy 8. the vehicle's mileage was inaccurate 9. the vehicle's brake pedal felt "soft" 	<ol style="list-style-type: none"> 1. the GPS was operating properly, but the audio had been turned off, so it was turned back on 2. the vehicle's information display was operating properly 3. there was no problem with the vehicle's gas mileage, since the vehicle display indicated that Complainant was getting 25.6 MPG and the technician was able to get 28 MPG during a test drive 4. the cruise control, windows, and electrical system were operating properly 5. the vehicle's blind spot monitoring system and rear cross traffic alert system were turned off, so the technician turned them on 6. not able to duplicate the concern with the vehicle's air conditioner blower motor 7. not able to duplicate the concern with the vehicle's tires being noisy 8. the vehicle's mileage was accurate, as the mileage on the vehicle's engine control module (ECM) and the instrument cluster matched

¹⁶ *Id.*, pp. 14-16.

			9. the vehicle's brake pedal was operating normally ¹⁷
2/11/19	6,447	<ol style="list-style-type: none"> 1. Blind Spot Monitoring System (BSMS) not working properly 2. Cruise control not activating and turning itself off 	<ol style="list-style-type: none"> 1. Unable to duplicate concern 2. Unable to duplicate concern, collision damage to front end of vehicle could affect operation of the cruise control¹⁸
6/5/19	7,153	<ol style="list-style-type: none"> 1. Reduced gas mileage 2. GPS not working 3. Cruise control sometimes won't engage and will turn itself off 	<ol style="list-style-type: none"> 1. Technician was able to obtain 32 mpg on test drive, no problem found 2. Unable to duplicate concern 3. There was damage to the vehicle's front wave mm radar sensor and the cruise control and PCS system could not be tested until the damage was repaired¹⁹
9/27/19	9,989	<ol style="list-style-type: none"> 1. GPS/Navigation system not working correctly 2. ignition switch not working properly 3. cruise control not working properly 4. the interior lights not working 5. headlights not working properly 6. informational panels missing 7. pulling to the left 8. the tires making loud noise 	<ol style="list-style-type: none"> 1. the GPS system was working properly 2. the ignition switch was working properly 3. the cruise control was working properly, although there was damage to the vehicle's front end which could affect the cruise control's operation 4. the interior lights and instrument panel lights were working properly 5. the headlights high and low beams were working properly 6. the information system was working properly and all panels were present 7. the vehicle did not pull to the left, although all four (4) tires had low pressure 8. the tires sounded normal when driving the vehicle²⁰

¹⁷ Respondent Ex. 4, Case Information dated September 18, 2018.

¹⁸ Respondent Ex. 1, Repair Orders for Complainant's vehicle, p. 18.

¹⁹ Respondent Ex. 5, Case Information dated June 5, 2019.

²⁰ Respondent Ex. 1, Repair Orders for Complainant's vehicle, pp. 20-22.

Respondent sent their representatives to inspect Complainant's vehicle on September 18, 2018, June 5, 2019, and September 27, 2019. The representatives were never able to recreate any of Complainant's concerns with the vehicle on any of those occasions. Sometime prior to February 11, 2019, the front end of Complainant's vehicle was damaged. Respondent's representatives indicated that the damage could affect the operation of the vehicle's cruise control. (As of the date of hearing the damage has not been repaired.)

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 8, 2019.²¹

Complainant stated that he does not feel safe in the vehicle. He purchased the vehicle due to the safety features advertised by Respondent, but doesn't feel that the features all work properly.

During cross-examination, Complainant denied having turned off the audio for the vehicle's GPS/Navigation system. He also denied turning off the vehicle's blind spot monitoring system. Complainant stated that the vehicle's windshield had been replaced by Discount Glass due to windshield damage. He does not know whether the windshield installers correctly calibrated the front end camera which is used by the vehicle's cruise control.

3. Martha Shandley's Testimony

Martha Shandley, Complainant's wife, testified in the hearing. She stated that when she and Mr. Shandley are riding in the vehicle it makes a loud noise. It sounds like the vehicle has mud tires. Ms. Shandley stated that the noise is constant and can be very distracting.

Ms. Shandley also stated that sometimes the vehicle's engine will continue to run after they have attempted to turn off the vehicle. She stated that this happens occasionally. Ms. Shandley went on to testify that the vehicle's lights sometime don't come on at night.

Ms. Shandley stated that she and Complainant do not always rely on the vehicle's GPS/Navigation system to provide directions on a trip. She stated that they have purchased a separate Garmin navigation system and use it in the vehicle when they need directions anywhere.

Ms. Shandley stated that the vehicle is more trouble than its worth. She doesn't like it and feels that it's a strange vehicle. She feels that it's unreliable and doesn't always do what it's supposed to do.

²¹ Complainant Ex. 1, Lemon Law complaint dated March 8, 2019.

C. Respondent's Evidence and Arguments

Daniel Lee, Senior Manager Service Support, testified for Respondent. Mr. Lee has been in the automotive industry for 45 years. He has been in his current position for the last 21 years. He is an Automotive Service Excellence (ASE) Master Certified Technician.

Mr. Lee testified that the vehicle had been inspected twice (September 18, 2018 and June 5, 2019) by Ramon Ordonez for various concerns raised by Complainant. On neither occasion was Mr. Ordonez able to recreate any of the concerns.

Mr. Lee testified that he inspected the vehicle on September 27, 2019, due to new concerns about the vehicle raised by Complainant. Mr. Lee test drove the vehicle during the inspection. He testified that the vehicle seems to operate as designed and that he was not able to duplicate any of Complainant's concerns during the test drive. The vehicle's GPS/Navigation system, ignition switch, cruise control, interior lights, headlights, information panel, and alignment all worked properly. The vehicle's tires did not seem to make excessive noise when he took the test drive.

Mr. Lee stated that a vehicle's mileage can be affected by driving habits, acceleration, speed, and traffic. A vehicle will get less mileage in stop-and-go traffic. Mr. Lee stated that the tire noise issue could be caused by the tires being either over or under inflated. If the tires are over inflated, then the vehicle loses the "cushion affect," *i.e.*, the feedback sound frequency from the road is increased.

Mr. Lee stated that the vehicle's cruise control is designed to sometimes turn off on its own. If the vehicle's windshield wipers turn on, the cruise control is designed to turn off. A driver should never use cruise control in the rain due to safety issues. Mr. Lee also stated that when he inspected the vehicle in September of 2019, he noticed there was collision damage to the vehicle's front end at the millimeter radar sensor which can also affect the operation of the cruise control. Mr. Lee also stated that there was no evidence presented that indicated that when the vehicle's windshield was replaced, that the glass technician properly calibrated the vehicle's front camera which also can affect the cruise control operation.

D. Test Drive at Time of Hearing

At the time of hearing, the hearings examiner, Complainant, and Mr. Lee took a test drive in the vehicle. Mr. Lee checked the tire pressure on all four (4) of the vehicle's tires through the tire pressure monitoring system on the vehicle. The tires were all inflated over 40 psi which is over the manufacturer's recommended tire pressure. Mr. Lee then checked the vehicle's informational screens. They all seemed to be present. The headlights and interior lights all worked properly at the time. The ignition switch also worked properly.

During the actual drive, the vehicle's GPS/Navigation system did not work properly. It was slow to make adjustments and showed wrong directions to where Mr. Lee was attempting to drive. The vehicle's tires did not seem excessively noisy. There was some road noise, but it wasn't unusual. The vehicle's cruise control worked properly during the test drive. The vehicle did not pull excessively. Mr. Lee indicated that there was a slight drift which is normal for the vehicle.

E. 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.

1. Cruise Control Issue

Complainant alleged that the vehicle's cruise control would not work properly, in that it would turn itself off and sometimes not activate. The testimony taken at hearing indicates that the vehicle's cruise control is designed to turn itself off in certain situations, specifically when the vehicle's windshield wipers are turned on. There is no evidence to indicate that this was not the case during the situations where the cruise control turned itself off or not activate. In addition, the evidence shows that the vehicle has sustained front end damage which may affect the operation of the cruise control. The damage was visible on the date of hearing. Complainant has not had the vehicle repaired for the front end damage. Since there is no evidence to indicate that the vehicle's cruise control is not working as designed and since it cannot be tested properly at this time due to the vehicle's front end damage, the hearing examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle.

2. GPS/Navigation Issue

Complainant asserts that the vehicle's GPS/Navigation system doesn't give correct directions and that the audio feature would sometimes not work. The evidence taken at hearing indicates that the GPS/Navigation system does not work properly. When using it on the test drive taken at the hearing, the system was slow to make adjustments and showed wrong directions to where Mr. Lee was attempting to drive. The GPS/Navigation system does seem to be defective. However, the issue does not substantially impair the use or market value of the vehicle and does not create a

serious safety hazard as defined in the Occupations Code. As such, the hearings examiner will order Respondent to repair the concern with the system.

3. Poor Gas Mileage Issue

Complainant alleges that the vehicle's gas mileage has decreased since purchasing the vehicle. Respondent does not warrant the vehicle's fuel mileage. The fuel mileage ratings listed on the new vehicle's (Monrone) window sticker are established by the Environmental Protection Agency (EPA), and federal law dictates that EPA mpg ratings are estimates and do not constitute a warranty of actual fuel economy. The Lemon Law does not extend to defects or conditions not covered by the manufacturer's warranty. Therefore, this issue does not warrant repurchase or replacement of the vehicle.

4. Tires Making Excessive Noise (Singing) Issue

Complainant asserts that the vehicle's tires make too much noise when he's driving the vehicle and that he can't conduct a conversation in the vehicle due to the noise. Vehicles naturally make noise, be it road noise or engine noise. Complainant's vehicle is not a luxury vehicle and, as such, some noise is to be expected. The evidence also indicates that improper tire inflation could cause more noise than normal and during the test drive taken at the time of hearing, the vehicle's tire pressure monitoring system indicated that all four (4) tires were seriously over inflated. Given this set of circumstances, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle.

5. Information Panels Missing Issue

Complainant asserts that some of the vehicle's information panels are missing from the information display. There was no evidence presented to indicate that any of the information panels were missing. The vehicle was inspected several times for this issue and none of the technicians who inspected the vehicle (including two [2] of Respondent's representatives) determined that any of the information panels were gone. Therefore, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle.

6. Ignition Switch Not Working Issue

Complainant asserts that the vehicle's ignition switch will sometimes fail to work properly. Complainant did not raise this issue until sometime in 2019. The vehicle was inspected for this issue only once, on September 27, 2019, and the ignition switch worked as designed at that time. In addition, during the test drive take at the time of hearing on January 28, 2020, the ignition switch worked normally. There is no evidence to indicate that the switch is not working properly.

Therefore, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle.

7. Headlights Not Working Issue

In addition, Complainant asserts that the vehicle's headlights don't work properly. This is another issue that Complainant did not raise until sometime in 2019. The vehicle was inspected for this issue only once, on September 27, 2019, and the headlights worked as designed at that time. In addition, during the test drive take at the time of hearing on January 28, 2020, the headlights worked normally. There is no evidence to indicate that the headlights are not working properly. Therefore, the hearings examiner must hold that this issue does not provide sufficient grounds to order repurchase or replacement of the vehicle.

Complainant's request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the defective GPS/Navigation system in the vehicle. Such repairs must be completed within the time frame indicated below.

III. FINDINGS OF FACT

1. Jack Shandley (Complainant) leased a new 2017 Toyota Camry on April 19, 2017, from Ram Country Chrysler–Plymouth–Dodge (Ram Country) in Del Rio, Texas, with mileage of 301 at the time of delivery.
2. Ram Country assigned the vehicle lease to Toyota Lease Trust (Intervenor) at the time that the lease agreement was signed.
3. The manufacturer or distributor of the vehicle, Gulf States Toyota, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first.
4. The vehicle's mileage on the date of hearing was 10,914.
5. Complainant has had issues with the vehicle's cruise control not working properly, the GPS/Navigation system not working properly, the vehicle's gas mileage decreasing, the vehicle's tires making too much noise (singing), some information panels missing from the vehicle's display, the ignition switch not working properly, and the headlights not working properly.
6. Complainant took the vehicle to Respondent's authorized dealers, Toyota of Del Rio and Toyota of Boerne, in order to address his concerns with the vehicle on the following dates:

- a. February 18, 2018, at 2,278 miles;
 - b. May 17, 2018, at 3,005 miles;
 - c. June 4, 2018, at 3,141 miles;
 - d. June 14, 2018, at 3,592 miles;
 - e. July 10, 2018, at 3,977 miles;
 - f. July 12, 2018, at 4,176 miles;
 - g. July 30, 2018, at 4,469 miles;
 - h. September 18, 2018, at 5,470 miles; and
 - i. February 11, 2019, at 6,447 miles.
7. On February 18, 2018, the dealer's service technician determined that the vehicle's cruise control and radar cruise control were operating normally and did not perform any repair to the vehicle for the concern regarding the cruise control intermittently failing to work.
 8. On May 17, 2018, the dealer's service technician determined that the vehicle's air conditioner was operating as designed and was not too loud when set on high.
 9. On June 4, 2018, the dealer's service technician was unable to duplicate a concern that the vehicle's cruise control intermittently turns off for no reason. No repair was performed for the issue and Complainant was informed that an error message would appear on the vehicle's display if the cruise control turned off for no reason.
 10. Also during the June 4, 2018 repair visit, Complainant indicated that the vehicle's brake pedal had to be pressed halfway down before the vehicle started braking. However, the technician determined that the vehicle's brakes were operating as designed.
 11. On June 14, 2018, the dealer's service technician could not duplicate the concern that the vehicle's cruise control would intermittently not engage. The technician also determined that the vehicle's GPS recognized Complainant's home address correctly and that the vehicle's air conditioner was not making too much noise when set at high, *i.e.*, the noise heard was comparable to a like vehicle's air conditioner at the same setting.
 12. On July 10, 2018, the dealer's service manager test drove the vehicle with Complainant to see if the vehicle had a noisy ride and if the tires were making too much noise. The manager felt that the concern was not duplicated during the test drive.
 13. On July 12, 2018, Complainant took the vehicle to Toyota of Boerne to address concerns with a squeaky noise coming from the vehicle's air conditioner when it was first turned on, the GPS not taking Complainant to the correct location and not working, and a decrease in the vehicle's gas mileage.

14. During the repair visit described in Findings of Fact #13, Toyota of Boerne's service technician could not duplicate the noise with the vehicle's air conditioner and so made no repair for the issue.
15. During the repair visit described in Findings of Fact #13, Toyota of Boerne's service technician performed a software update to the vehicle's GPS to address the concern that the system was not working and taking Complainant to incorrect locations.
16. During the repair visit described in Findings of Fact #13, Toyota of Boerne's service technician also determined the vehicle was working as designed so that the gas mileage should not have decreased.
17. On July 30, 2018, Complainant took the vehicle back to Toyota of Del Rio to address three (3) issues: no audio emitting from the GPS, decreased gas mileage, and MPG display not appearing on the vehicle's display screen.
18. During the repair visit described in Findings of Fact #17, Toyota of Del Rio's service technician could not duplicate the concern regarding the GPS audio and determined that it was working as designed; the service technician determined that the vehicle's gas mileage was within specifications and informed Complainant that the mileage could be affected by driving habits; and that the vehicle had the correct display screens for this model vehicle.
19. On September 18, 2018, the vehicle was inspected at Toyota of Del Rio by Respondent's field technical specialist, Ramon Ordonez.
20. During the repair visit described in Findings of Fact #19, Complainant raised the following issues:
 - a. the GPS system was inaccurate and the audio was not working;
 - b. an informational screen had been erased from the vehicle's information display by a service technician;
 - c. the vehicle's gas mileage had decreased from 28 MPG to 19 MPG;
 - d. when driving in the rain, the cruise control, windows, and electrical system stopped working;
 - e. the vehicle's rear cross-traffic alert was not operating properly;
 - f. the air conditioner's blower motor was making a noise when the system was set on high;
 - g. the vehicle's tires were excessively noisy;
 - h. the vehicle's mileage was inaccurate; and
 - i. the vehicle's brake pedal felt "soft."

21. During the repair visit described in Findings of Fact #19, Mr. Ordonez was not able to duplicate Complainant's concerns and found that:
 - a. the GPS was operating properly, but the audio had been turned off, so he turned it back on;
 - b. the vehicle's information display was operating properly;
 - c. there was no problem with the vehicle's gas mileage, since the display indicated that Complainant was getting 25.6 MPG and Mr. Ordonez was able to get 28 MPG during a test drive;
 - d. the cruise control, windows, and electrical system were operating properly;
 - e. the vehicle's blind spot monitoring system and rear cross traffic alert system were turned off, so he turned them on;
 - f. he was not able to duplicate the concern with the vehicle's air conditioner motor;
 - g. he was not able to duplicate the concern with the vehicle's tires being noisy;
 - h. the vehicle's mileage was accurate, as the mileage on the vehicle's engine control module (ECM) and the instrument cluster matched; and
 - i. the vehicle's brake pedal was operating normally.
22. On February 11, 2019, Complainant took the vehicle to Toyota of Del Rio for repair complaining that the vehicle's blind spot monitoring system was not working properly and that the cruise control was not turning on and was turning itself off. The service technician could not duplicate the concerns and indicated the vehicle's front radar sensor was damaged and could be affecting the vehicle's cruise control.
23. On March 8, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
24. On June 5, 2019, Complainant took the vehicle to Toyota of Del Rio due to his concerns regarding poor gas mileage when driving the vehicle, the GPS not working, and the cruise control intermittently not engaging and turning itself off. The vehicle's mileage at the time was 7,153.
25. During the repair visit described in Findings of Fact #24, Mr. Ordonez inspected the vehicle and took a test drive of 12 miles and was able to get 32 MPG for the gas mileage.
26. During the repair visit described in Findings of Fact #24, Mr. Ordonez was unable to recreate the concern with the vehicle's GPS.
27. Also during the repair visit described in Findings of Fact #24, Mr. Ordonez determined that there was damage to the vehicle's front wave mm radar sensor and that the cruise control and PCS system could not be tested until the damage was repaired.

28. On September 27, 2019, Complainant took the vehicle to Toyota of Del Rio for inspection by Respondent's senior manager for service support, Daniel Lee. The vehicle's mileage at the time was 9,989.
29. During the repair visit described in Findings of Fact #28, Mr. Lee inspected the vehicle for the following issues:
 - a. the GPS/Navigation system not working correctly;
 - b. the ignition switch intermittently not working;
 - c. the cruise control intermittently not working properly;
 - d. the interior lights not working;
 - e. the headlights not working properly;
 - f. informational panels missing;
 - g. pulling to the left; and
 - h. the tires making loud noise.
30. During the repair visit described in Findings of Fact #28, Mr. Lee was unable to duplicate Complainant's concerns and found:
 - a. the GPS system was working properly and took him to the proper destination;
 - b. the ignition switch was working properly;
 - c. the cruise control was working properly, although there was damage to the vehicle's front end which could affect the cruise control's operation;
 - d. the interior lights and instrument panel lights were working properly;
 - e. the headlights high and low beams were working properly;
 - f. the information system was working properly;
 - g. the vehicle drove appropriately and did not pull to the left, although all four (4) tires had low pressure; and
 - h. the tires sounded normal when driving the vehicle.
31. On May 31, 2019, 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.
32. The hearing in this case convened on January 28, 2020, in Del Rio, Texas before Hearings Examiner Edward Sandoval. Complainant, Jack Shandley, Jr., appeared and represented himself at the hearing. Also present and testifying for Complainant was his wife, Martha

Shandley. Respondent, Gulf States Toyota, Inc., was represented by Daniel Lee, Senior Manager Service Support. In addition, Donna Plocek, Customer Experience Operations Manager, was present and offered testimony for Respondent. Intervenor, Toyota Lease Trust, was represented telephonically by Chloe Nelson, Litigation Paralegal. The hearing record closed on January 28, 2020.

33. 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 proved by a preponderance of the evidence that the vehicle has a verifiable defect or nonconformity, *i.e.*, the GPS/Navigation system does not work properly. However, that defect does not present a serious safety hazard nor substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent was not provided with a reasonable number of attempts 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. Respondent had a final opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
9. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
10. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

11. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase or replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle's GPS/Navigation system to the applicable warranty. Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²² Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused 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(2).

SIGNED March 30, 2020



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

²² (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.