

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0007631 CAF**

JAMINSON HOLMES, Complainant	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
GENERAL MOTORS LLC, Respondent		

DECISION AND ORDER

Jaminson Holmes (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle manufactured by General Motors LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the vehicle’s use or market value after a reasonable number of repair attempts. Consequently, the Complainant’s vehicle does not qualify for repurchase/replacement but does qualify for warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 August 26, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on September 10, 2020. George Tennant, attorney, represented the Complainant. Clifton Green, business resource manager, represented the Respondent.

¹ TEX. GOV’T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable 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” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life-threatening malfunction or nonconformity 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.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “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.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. 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.” 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.”⁶

c. 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.⁷

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.⁸

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ 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.⁹

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

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.¹¹ 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.¹²

d. Other Requirements

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;¹³ (2) the respondent was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *Ford Motor Company v. Texas Department 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.’”).

¹² *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.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1). 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent may satisfy the requirement to provide notice of the defect or nonconformity to the Respondent.

¹⁴ A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer satisfies the opportunity to cure requirement when the respondent allows a dealer to attempt repair after written notice to the

of: the warranty's expiration date or 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.¹⁵

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle” and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect before the warranty's expiration.¹⁶ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁷

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainant cannot prevail where the existence of any required fact appears equally likely or unlikely.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint must state “sufficient facts to enable the department and the party complained against to know the

respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 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. *Id* at 2.

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁹ *E.g.*, *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

²⁰ “In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days.” TEX. GOV'T CODE §§ 2001.051; “Notice of a hearing in a contested case must include . . . a short, plain statement of the factual matters asserted.” TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may

nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

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 because of the defect.²⁴ 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 (for example, through receipts or similar written documents).²⁵ However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁶

B. Summary of Complainant’s Evidence and Arguments

On May 28, 2019, the Complainant, purchased a new 2019 GMC Sierra 1500 from Ron Carter Chevrolet Buick GMC, a franchised dealer of the Respondent, in Alvin, Texas. The vehicle had 512 miles on the odometer at the time of purchase. The vehicle’s limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.

be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(3).

²² 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²³ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁴ TEX. OCC. CODE § 2301.604.

²⁵ 43 TEX. ADMIN. CODE § 215.209(a).

²⁶ 43 TEX. ADMIN. CODE § 215.208(b)(1).

On December 30, 2019, the Complainant's attorney provided a written notice of defect to the Respondent. On February 5, 2020, the Complainant filed a complaint with the Department alleging that the vehicle exhibited: electrical problems with OnStar, Internet, and safety features, and a loud sound from the engine.

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

Date	Miles	Issue
August 19, 2019		
September 18, 2019	6,636	Squealing noise (valve lifter)
September 30, 2019		
January 31, 2020	7,668	Squealing noise, OnStar not working

The Complainant explained that he needed four-wheel drive for work as a safety engineer. He explained that he would need to drive in muddy conditions, which he would not do in two-wheel drive. The engine noise ended up being related to a fuel management system issue. The Complainant initially arranged to have the vehicle repurchased but the Respondent changed its position. When going to the dealership on February 8, 2020, the Complainant did not feel safe getting into the vehicle since OnStar and the valve lifter were not fixed. He did not leave with the vehicle. He last drove the vehicle on September 28, 2019. He did drive the vehicle from May 28, 2019, to August 28, 2019. The Complainant testified that on August 13, 2020, when he arrived at the dealership to meet the field service engineer, Bruce Morris, the shop foreman, Bill Sexton, was unaware why he was there. When starting the vehicle, the engine made a noise. Additionally, the dealer still needed to order a part to repair OnStar, which was not repaired.

On cross-examination, the Complainant affirmed that all the complaint issues persisted. He elaborated that he had complained about engine noise, but the dealership believed the noise related to the fuel management system but the dealership had problems diagnosing the issue. He confirmed that the OnStar and engine noise were still not fixed. He described the noise as occurring when starting the vehicle, but the noise was occurring chronically. He explained that the noise was apparent essentially when turning on and was still present. He did not know if the fuel management issue was fixed. When asked if the Complainant was informed to be at the dealership at 8:30 a.m. for the August 13th visit, he explained that Mr. Tennant had notified him he was supposed to meet Mr. Morris at noon (Mr. Green acknowledged that a change was made the same day). The Complainant answered that he last drove the vehicle on September 28, 2019, when turning it over

to the dealer. He testified that he had several discussions with OnStar, which concluded that the OnStar problem was a hardware issue from manufacturing, which the dealership should address. He elaborated that his concern (regarding the engine) was the loud noise, then the dealer notified him what the problem appeared to be but subsequently could not determine what the problem was. When asked why he did not pick up the vehicle on August 13th, he replied that the dealer did not try to give him the vehicle, the engine noise was still present, and he was informed to contact Mr. Morris. On redirect examination, the Complainant explained that he would address repair when dropping of the vehicle for oil changes.

Upon clarifying questions, the Complainant described that he noticed the OnStar problem when he switched out of demo mode to utilize the paid services. However, his profile was rejected. He contacted OnStar, which deleted his profile and reinitialized. OnStar determined everything was functioning except the services. The vehicle would not communicate with the servers except in demo mode. At the dealer, OnStar functioned in demo mode but did not work when using the Complainant's profile. The Complainant noticed problems with OnStar up to September 28, 2019. He described the engine noise as a random squeal which went from subtle to loud. He last noticed the noise on August 13, 2020. He believed the vehicle had four repair visits for the OnStar and engine noise issues.

C. Summary of Respondent's Evidence and Arguments

Bruce Morris, field service engineer, testified that he inspected the vehicle on April 1, 2020. The noise was not present when starting. The display showed a request for the Complainant to log in but Mr. Morris could only deal with the hardware since he did not have the login information. OnStar could not confirm that an advisor notifying the Complainant to take the vehicle to the Respondent. Mr. Morris found OnStar to be operating as designed. He found that the dealer had replaced the cam shaft and lifters. He did not find any damage on the cam shaft. Mr. Morris noted that he had an appointment scheduled with the Complainant at 8:30 a.m. and he arrived at 8:15 a.m. He had a subsequent meeting in Baytown that day and could not stay for a changed meeting, which no one notified him of.

On cross-examination, Mr. Morris testified that there were no official inspections after April (2020). He elaborated that testing in April showed no hardware problem with OnStar. He did not enter the account information because they needed the Complainant to enter his

information. However, pushing the blue button runs the main diagnostics and OnStar provides the information that it can. He added that the guest account stored would not resolve an issue with the Complainant's account. He confirmed that there was no hardware replaced in relation to OnStar.

D. Analysis

As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect)²⁷ that continues to exist, even after repair.²⁸ In part, the warranty generally states that: "The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new, remanufactured, or refurbished parts."²⁹ According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³⁰

In the present case, the evidence reflects that the engine noise and OnStar issues are warrantable defects. However, the Department's precedents hold that a noise by itself does not constitute a substantial impairment or a safety hazard.³¹ Though the dealership replaced the valve lifters in relation to the engine noise, the dealership ultimately could not determine the cause of the noise. With regard to the OnStar issues, the record provides no indication that the OnStar problem impairs the ordinary use of the vehicle (e.g. no evidence of causing driveability problems). Further, under the reasonable purchaser standard, the OnStar problem does not substantially impair

²⁷ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁸ TEX. OCC. CODE § 2301.605.

²⁹ Respondent's Ex. 4, New Vehicle Limited Warranty.

³⁰ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

³¹ *E.g.*, Texas Department of Transportation, *Alvarez v Ford Motor Company*, MVD Cause No. 08-0440, Final Order Denying § 2301.604 Relief (Motor Vehicle Division Dec. 11, 2008); State Office of Administrative Hearings *Alvarez v Ford Motor Company*, Docket No. 601-08-4215.CAF, Proposal for Decision (Oct. 9, 2008).

the value of the vehicle. Nor does the OnStar issue create a serious safety hazard as defined by the Lemon Law. Consequently, the vehicle does not qualify for repurchase or replacement. However, even if repurchase/replacement does not apply, the vehicle may still qualify for warranty repair relief. In this case, a preponderance of the evidence shows that the alleged defects continue to exist after repairs and otherwise qualifies for repair relief.

III. Findings of Fact

1. On May 28, 2019, the Complainant, purchased a new 2019 GMC Sierra 1500 from Ron Carter Chevrolet Buick GMC, a franchised dealer of the Respondent, in Alvin, Texas. The vehicle had 512 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.
3. The warranty generally states that: "The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new, remanufactured, or refurbished parts."
4. In relevant part, the repair orders show the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
August 19, 2019		
September 18, 2019	6,636	Squealing noise
September 30, 2019		
January 31, 2020	7,668	Squealing noise, OnStar not working

5. On December 30, 2019, the Complainant, through his attorney, provided a written notice of defect to the Respondent.
6. On February 5, 2020, the Complainant filed a complaint with the Department alleging that the vehicle exhibited: electrical problems with OnStar, Internet, and safety features, and a loud sound apparently related to the fuel management system.
7. On May 19, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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 factual matters asserted.

8. The hearing in this case convened on August 26, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on September 10, 2020. George Tennant, attorney, represented the Complainant. Clifton Green, business resource manager, represented the Respondent.
9. The vehicle's odometer displayed 7,772 miles at the time of the hearing.
10. The vehicle's warranty was in effect at the time of the hearing.
11. The vehicle's OnStar system would not communicate with OnStar servers except in demo mode. OnStar functioned in demo mode but did not work when using the Complainant's profile. An OnStar representative concluded that the problem resided in the vehicle's hardware. The Complainant noticed problems with OnStar up to September 28, 2019. The OnStar malfunction had not been repaired and continues to exist.
12. The vehicle's engine exhibited a random squealing noise which varied from subtle to loud. The Complainant last noticed the noise on August 13, 2020. The noise was not associated with any vehicle failures or driveability problems.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
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. The Complainant filed a sufficient complaint with the Department. 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a).
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209. Reimbursement of attorney's fees does not apply because the Respondent was not represented by counsel in this case. 43 TEX. ADMIN. CODE § 215.209(a)(6).
8. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
9. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
10. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. 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 §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, the Respondent shall resolve the following issues: the squealing noise from the engine and the OnStar malfunction.

Upon this Order becoming final under Texas Government Code § 2001.144:³² (1) the Complainant shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **20 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the 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 November 18, 2020



ANDREW KANG
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES

³² 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.