TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0008752 CAF

MELIDA GARCIA-LOPEZ and EMMANUEL LOPEZ-VELA, Complainants	§	**BEFORE THE OFFICE**
v.	§	**OF**
FCA US LLC, Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Melida Garcia-Lopez and Emmanuel Lopez-Vela (Complainants) 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 FCA US LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for repurchase relief.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing[1] 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 September 8, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented themselves. Jan Kershaw, early resolution case 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]

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[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]

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[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

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[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 Complainants.[18] The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.[19] Accordingly, the Complainants 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

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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 Complainants 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 Complainants' Evidence and Arguments

On September 15, 2017, the Complainants, purchased a new 2017 Chrysler Pacifica from Huffines Dodge Lewisville, a franchised dealer of the Respondent, in Lewisville, Texas. The vehicle had 676 miles on the odometer at the time of purchase. The vehicle's limited warranty provides basic coverage for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 60,000 miles, whichever occurs first.

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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 20, 2019, the Complainants, through an attorney, provided a written notice of defect to the Respondent. On March 7, 2020, the Complainants filed a complaint with the Department alleging issues with: hard transmission shifting; the rear hatch failing to completely close; inaccurate outside temperature shown on the instrument cluster; failure to recognize the KeySense key fob so that the vehicle will not start; erroneous alert that the key fob has left the vehicle with the key fob still inside; noise from the sliding doors; driver's side sliding door failing to operate; sliding doors opening by themselves; hatch stopping part way; secondary battery failure causing the vehicle to turn off; auto stop/start not working properly; and noise from the axle. The Respondent stipulated to the existence of the alleged defects and only disputed the amount of repurchase.

Mr. Lopez-Vela testified that he included his tax return because he was unable to work for four weeks. When asked what expenses he wanted reimbursed on the bank statements, he explained that the Complainants incurred expenses while out of town waiting for repairs, on June 26, 2018, to July 19, 2018. He elaborated that the vehicle broke down in Kingsville while traveling to Brownsville. The Complainants had intended to go and stay until Friday (June 29, 2018) and return the next day (June 30, 2018). They ended up staying until July 18th or 19th. They did not stay at a hotel while stranded because they had relatives in Brownsville. Though they did not have lodging expenses, they incurred food expenses. Mr. Lopez-Vela elaborated that their expenses included personal products, cleaning products, cold items, and a lot of gas (for the loaner vehicle) as compared to their minivan. The dealer provided a loaner vehicle that was not comparable to their vehicle. He added that they remained in contact with the Respondent about returning their vehicle. Days, then weeks passed, and eventually they contacted the office of the Respondent's CEO. The Respondent did not tell Mr. Lopez-Vela to rent a vehicle but notified him that the Respondent would send a team to address the vehicle.

Mrs. Garcia-Lopez testified that the dealer first told the Complainants the repair would take a week, and then said another week, and another week, which was why the Complainants contacted the CEO's office. Then the dealer told the Complainants the repair would take three months because the vehicle model was very new and the dealer did not have the part. They did not go back home because the repair was supposed to be quick.

Mr. Lopez-Vela added that the Respondent would only provide $35 a day for a rental and the Complainants could not rent a minivan for that much. On cross-examination, he stated that the dealer provided a five-person pickup. When asked about the number of persons in his family, he explained that they had family in Brownsville and needed a seven-passenger vehicle but his immediate family had five members. When asked whether they could go home, he explained that their luggage would have been at risk if left on the truck's bed. He elaborated that the trip was about 500 miles and the bed was not covered, so their luggage could be removed when stopping for gas and the like.

C. Analysis

As noted above, only the repurchase amount, particularly incidental expenses, remains at issue in this proceeding. As explained in the discussion of applicable law, the Complainants have the burden of proving every required element, including reasonable incidental costs/expenses. In conjunction with repurchase or replacement, the Lemon Law requires reimbursement of "reasonable incidental costs" resulting from loss of use of the vehicle caused by the complained of defects. The Department's rules lists seven types of reimbursable incidental expenses: (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. Although this list is not exclusive, under the principle of *ejusdem generis*, the list is construed as encompassing only the same kind of expenses as those specifically enumerated.[27] Finally, the expenses must be reasonable and verifiable (for example, through receipts or similar written documents).[28] In this case, the Complainants seek reimbursement related to their stay out of town after their vehicle's failure, in addition to the repurchase amount. Given the rule above, reimbursement only applies to those incidental expenses incurred due to the vehicle's failure. Conversely, any expenses that would have been incurred regardless of the vehicle's failure are not reimbursable.

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[27] *City of Houston v. Bates*, 406 S.W.3d 539, 545 (Tex. 2013).

[28] 43 TEX. ADMIN. CODE § 215.209(a).

1. Telephone Calls/Mail Charges for Contacting the Manufacturer or Dealer

The rules provide reimbursement for telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle. The evidence includes a billing statement for mobile phone charges. However, the call detail shows no per call charges. Instead, all calls appear to have been included in the calling plan charges. In sum, the statement shows no call charges directly attributable to contacting the manufacturer or dealer.

2. Meals and Lodging

The Department's rules specifically provide reimbursement for meals and lodging necessitated by the vehicle's failure during out-of-town trips. The Complainants testified that they did not incur any lodging expenses because they stayed with relatives. However, they did incur meal expenses.The evidence shows that on June 26, 2018, about 1:00 p.m., the subject vehicle stalled on the highway in Nueces County in transit to Brownsville. The relevant repair invoice from the dealer, Neesen CDJR, in Kingsville shows a June 27, 2018, repair order open date and a July 24, 2018, invoice date. The Complainants had originally planned to leave Brownsville on June 30, 2018. The first debit from Brownsville appears on a bank statement on June 28, 2018. The last debit from Brownsville appears on July 18, 2019. The record reflects that the Complainants chose to stay in Brownsville, at least in part, because they believed their vehicle would be repaired promptly based on the dealer's representations. Additionally, the Complainant's did not want to travel with their luggage exposed in the bed of their loaner vehicle, a pickup truck. However, the rule specifies that the meals must be necessitated by the vehicle's failure. "Necessitate" commonly means: "to make necessary or unavoidable" or "to compel, oblige, or force."[29] Although traveling back in the loaner pickup may not have been ideal, the Complainants did have the use of the loaner vehicle. Consequently, the Complainant's extended stay and associated meal expenses were not necessitated by their vehicle's failure but instead were incurred because of the Complainants' decision to stay. Therefore, such meal expenses do not qualify for reimbursement.

[29] Necessitate, Dictionary.Com (2020), https://www.dictionary.com/browse/necessitate.

3. Other Expenses

The Complainants presented an invoice for tire rotation and balancing, and a receipt for the vehicle's registration, none of which are incidental expenses resulting from any loss of use of the vehicle. The increased fuel costs of the loaner vehicle as compared to the subject vehicle is a reimbursable incidental expense. However, the evidence does not show what that difference is. Additionally, the Complainant's bank statements show various debits that may include reimbursable expenses. However, the statements do not provide any itemization or other purchase details. Critically, the incidental expenses rule requires expenses to be verifiable and the burden of proof remains on the Complainants.

4. Lost Wages

As an initial matter, lost wages do not fit the ordinary meaning of incidental expense.[30] Moreover, the list of reimbursable expenses does not expressly include lost wages nor do lost wages comport with the type of expenses on the list. Consequently, lost wages are not reimbursable.

III. Findings of Fact

1. On September 15, 2017, the Complainants, purchased a new 2017 Chrysler Pacifica from Huffines Dodge Lewisville, a franchised dealer of the Respondent, in Lewisville, Texas. The vehicle had 676 miles on the odometer at the time of purchase.

2. The vehicle's limited warranty provides basic coverage for three years or 36,000 miles, whichever occurs first.

3. The warranty generally states that:

> The Basic Limited Warranty covers the cost of all parts and labor needed to repair any item on your vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation. There is no list of covered parts since the only exception are tires and Unwired headphones. You pay nothing for these repairs. These warranty repairs or adjustments—

[30] Dictionary.com defines "incidental" as: "happening or likely to happen in an unplanned or subordinate conjunction with something else"; "incurred casually and in addition to the regular or main amount: incidental expenses"; "likely to happen or naturally appertaining (usually followed by to)." Incidental, Dictionary.Com (2020), https://www.dictionary.com/browse/incidental. The Dictionary.com defines "expense" as: "cost or charge," "a cause or occasion of spending," and "the act of expending; expenditure." Expense, Dictionary.Com (2020), https://www.dictionary.com/browse/expense.

> including all parts and labor connected with them—will be made by your dealer at no charge, using new or remanufactured parts.

4. The Complainants took the vehicle to a dealer for service as shown below:

Date	Miles
March 14, 2018	5,383
June 27, 2018 (RO open) - July 24, 2018 (invoice date)	8,429
September 26, 2018	10,298
December 20, 2018 - January 7, 2019	13,107
January 25, 2019	13,430
April, 6, 2019	14,726
July 5, 2019	18,805
August 12, 2019 - August 21, 2019	19,476
September 12, 2019 - September 30, 2019	20,272
March 12, 2020	27,064

5. On December 20, 2019, the Complainants, through an attorney, provided a written notice of defect to the Respondent.

6. On March 7, 2020, the Complainants filed a complaint with the Department alleging issues with: hard transmission shifting; the rear hatch failing to completely close; inaccurate outside temperature shown on the instrument cluster; failure to recognize the KeySense key fob so that the vehicle will not start; erroneous alert that the key fob has left the vehicle with the key fob still inside; noise from the sliding doors; driver's side sliding door failing to operate; sliding doors opening by themselves; hatch stopping part way; secondary battery failure causing the vehicle to turn off; auto stop/start not working properly; and noise from the axle. The Respondent stipulated to the existence of the alleged defects and only disputed the amount of repurchase.

7. On July 20, 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 September 8, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. The

Complainants, represented themselves. Jan Kershaw, early resolution case manager, represented the Respondent.

9. The vehicle's odometer displayed 29,472 miles at the time of the hearing.

10. The vehicle's warranty was in effect at the time of the hearing.

11. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license & registration	$35,499.86
Delivery mileage	676
Mileage at first report of defective condition	5,383
Mileage on hearing date	29,472
Useful life determination	120,000

Purchase price, including tax, title, license & registration				$35,499.86				
Mileage at first report of defective condition	5,383							
Less mileage at delivery	-676							
Unimpaired miles	4,707							
Mileage on hearing date	29,472							
Less mileage at first report of defective condition	-5,383							
Impaired miles	24,089							
Reasonable Allowance for Use Calculations:								
Unimpaired miles	4,707	÷	120,000	×	$35,499.86		=	$1,392.48
Impaired miles	24,089	÷	120,000	×	$35,499.86	× 50%	=	$3,563.15
Total reasonable allowance for use deduction								$4,955.63
Purchase price, including tax, title, license & registration					$35,499.86			
Less reasonable allowance for use deduction					-$4,955.63			
Plus filing fee refund					$35.00			
Plus incidental expenses					$0.00			
TOTAL REPURCHASE AMOUNT					**$30,579.23**			

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 Complainants 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 Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).

6. The Complainants or a person on behalf of the Complainants provided sufficient notice of the alleged defect(s) to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

7. The Respondent had an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).

8. The Complainants timely filed the complaint commencing this proceeding. TEX. OCC. CODE § 2301.606(d).

9. The Complainants' vehicle qualifies for replacement or repurchase. A warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604(a).

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Order. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainants. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainants. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;

2. The Respondent shall repurchase the subject vehicle in the amount of **$30,579.23**. The refund shall be paid to the Complainants and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainants. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, the Complainants is responsible for providing the Respondent with clear title to the vehicle;

3. The parties shall complete the return and repurchase of the subject vehicle within **20 days** after the date this Order becomes final under Texas Government Code § 2001.144.[31] However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;

5. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and

6. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 days of the transfer.

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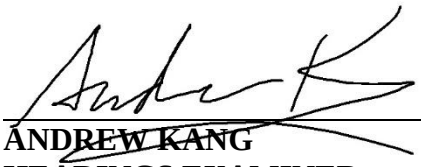
[31] This Order does <u>not</u> become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order 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.

SIGNED November 9, 2020



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