

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0012238 CAF**

LACHANDA MILES,	§	BEFORE THE OFFICE
Complainant	§	
	§	
v.	§	OF
	§	
KIA MOTORS AMERICA, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

LaChanda Miles (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 her vehicle distributed by Kia Motors America, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a currently existing warrantable defect. Consequently, the Complainant’s vehicle does not qualify for repurchase/replacement or 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 October 28, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented herself. Hope Bushnell, Consumer Affairs Analyst, Leo McAdams, Field Technical Representative, and Chris Besser, District Parts and Service 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 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 satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

¹⁴ TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent allows a dealer to attempt repair

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 unlikely or appears equally likely or unlikely.

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²⁰ The complaint must state “sufficient facts to enable the department and the party complained against to know the nature

after written notice to 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. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

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: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV'T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b)

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 Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁴

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.²⁵ 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).²⁶ However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁷

B. Summary of Complainant’s Evidence and Arguments

On September 28, 2019, the Complainant, purchased a new 2020 Kia Soul from Southwest Kia, a franchised dealer of the Respondent, in Mesquite, Texas. The vehicle had 28 miles on the

(“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 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 See TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁵ TEX. OCC. CODE § 2301.604.

²⁶ 43 TEX. ADMIN. CODE § 215.209(a).

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

odometer at the time of purchase. The vehicle's limited warranty provides basic coverage for 60 months or 60,000 miles, whichever occurs first; power train coverage for 120 months or 100,000 miles, whichever occurs first; and service adjustments coverage for 12 months or 12,000 miles, whichever occurs first. The Complainant believed she provided a notice of defect to the Respondent on March 13, 2020. However, the record does not include a copy of the notice. On June 10, 2020, the Complainant filed a complaint with the Texas Department of Motor Vehicles alleging that: the vehicle drifted to the left (alignment); the vehicle shut off three different times; the tire pressure (TPMS) light came on; and the engine seemed loud and had low oil (oil consumption). In relevant part, the Complainant took the vehicle to a dealer as follows:

Date	Miles	Issue
October 19, 2019	2,063	Vehicle pulls to the right
December 17, 2019	6,856	Oil and filter change (routine maintenance), no start, tire pressure light
March 11, 2020	13,074	Thumping/rattling when accelerating (start oil consumption test)
April 9, 2020	14,179	Check oil (oil consumption test continued)
June 10, 2020	17,696	Oil consumption test
July 8, 2020	18,931	Oil test
August 1, 2020	20,083	Oil consumption test
August 29, 2020	21,022	Oil consumption test

The Complainant testified that the car shutting off no longer occurred after the update and she had the TPMS issue repaired herself. However, the oil consumption issue remained unresolved. Additionally, the Complainant noted that the vehicle still drifted, but only after driving a while. She first noticed drifting about October (2019). She described that the vehicle veered to the right and she could feel "pulling" while holding the steering wheel. She did not notice a difference on different road surfaces or lanes. She noticed the pulling at about 15 to 20 mph. She did not notice any shaking. She last noticed the drifting issue the day before the hearing. Regarding the oil consumption issue, the Complainant described that the engine sounded loud at times and that after letting the vehicle warm up for 10 to 15 minutes, she drove off and heard some (unusual) noise. At the request of the Kia dealer, she brought the vehicle in for several oil consumption tests, though she missed one test. She added that only Kia dealers serviced the vehicle. Upon clarification questions, when asked if the Complainant checked the oil herself, she answered that she checked the oil possibly a week and a half before the hearing and the oil did not appear unusually low. She did not ordinarily check the oil level herself. She first became aware of the low oil when taking

the vehicle to a Kia dealer in March 2020. The oil was at least a quart low in June (2020). She last took the vehicle in to a dealer in late August (2020), when she was notified of a low oil level. She did not hear back about the issue after the last visit. The Complainant stated that the vehicle had 22,831 miles on the day of the hearing.

On cross-examination, the Complainant affirmed she did not send notice by certified mail to the Respondent to the address shown in the “NOTICE TO CONSUMERS STATE OF TEXAS.”²⁸ When asked if any defects were diagnosed, she explained that she had not heard back from the dealer. She had the first oil change done by Southwest Kia in Mesquite (in December 2019 at 6,856 miles). The Complainant confirmed that the issue with the vehicle spontaneously dying did not reoccur. Regarding the low tire pressure issue, the Complainant elaborated that she took the vehicle to a Kia in Mesquite, which could not find an issue. Afterwards she took the vehicle to a Discount Tire that fixed the tire pressure issue without charge. She did not know if Discount Tire reset the TPMS but the tire pressure light was off when she left. The Complainant acknowledged that the repair history did not show a repair attempt for the oil consumption issue, just oil consumption tests, but added that she did not hear back from the dealer. Regarding the vehicle stalling, the Complainant did not recall seeing a message but did see the battery light and the normal lights with the ignition on. When she tried to restart the car, it made a noise. After another attempt, the car restarted.

C. Summary of Respondent’s Evidence and Arguments

Ms. Bushnell noted that the Respondent was not involved with the repair visits and the dealer’s (Techline) case was closed in July (2020). The vehicle was presented for the pulling issue at 2,063 miles, but was found to be operating properly. For the oil consumption issue, the vehicle was presented to a dealer seven times. Five of the visits were for oil consumption tests and the dealer found the oil consumption to be normal. On March 11, 2020, at 13,074 miles, the dealer found the oil three quarts low and recommended an oil consumption test involving a three-step process of returning the vehicle for testing at 1,000-mile intervals. On April 9, 2020, at 14,179 miles, the Complainant returned the vehicle for the second consumption test and the dealer opened a Techline case. On June 10, 2020, at 17,696 miles, upon the vehicle’s return for the oil

²⁸ Respondent’s Ex. 1, 2020 Warranty and Consumer Information Manual.

consumption test, the dealer found the oil a quart low and informed the Complainant to return after 1,000 miles for another consumption test. At the next visit, the vehicle exceeded the mileage required for the consumption test, so the dealer restarted the series of oil consumption tests from the beginning. On July 8, 2020, at 18,931 miles, the tests continued, the vehicle passed the tests, the oil was full and the dealer made no repairs. On August 1, 2020, at 20,083 miles, the dealer added 0.4 quarts of oil and released the vehicle. On August 29, 2020, at 21,022, miles, the dealer added 0.65 quarts of oil. The Respondent required the consumption test to determine confirm whether the engine was defective. The repair orders show no repairs ordered or recommended. The owner's manual specified an oil change interval of 7,500 miles or six months and more frequently under severe conditions. However, the Complainant did not provide documentation to show oil changes in the specified intervals. Ms. Bushell asserted that the vehicle did not meet the Lemon's Laws presumptions for reasonable repair attempts. She noted that the Complainant did not mail notice as outlined in the warranty manual and that the Respondent did not have an opportunity to repair or inspect the vehicle.

On cross-examination, Ms. Bushnell responded that the warranty manual outlined providing notice by certified mail. She elaborated that contacting by phone was not the same as mail and if notice had been mailed, the Complainant's case would have been escalated to her department. She also explained that the settlement offers were a separate issue to ease the Complainant's concerns but were no longer offered when proceeding with a Lemon Law claim. The Complainant inquired whether taking the car to the dealer for the day constitute a repair attempt. Mr. Besser essentially responded that an actual repair attempt was a repair attempt.²⁹ He elaborated that the Respondent asked that the dealer do three tests, each at a 1,000-mile interval. There was a gap between the first and second tests. The second test occurred over 3,000 miles later (than the first), so Techline required the tests to start over. There was no external leak because the dealer would have visually identified the leak. As of yet, no defect was determined. Upon clarification questions, Ms. Bushnell answered that the Respondent provided a second offer of a

²⁹ As noted in the discussion of applicable law, under the Department's precedents, a repair attempt may be deemed to have occurred under certain circumstances without an actual repair attempt.

goodwill payment, with a release, on August 12 (2020), but the goodwill offer was not related to the Lemon Law claim.³⁰

D. Analysis

As explained in the discussion of applicable law, the law imposes the burden of proof on the Complainant. Accordingly, the Complainant must affirmatively prove every Lemon Law element by a preponderance of the evidence. In this case, a preponderance of the evidence does not show that the subject vehicle has a currently existing defect covered by the warranty (warrantable defect).

Lemon Law relief does not apply to all concerns that may occur with a vehicle but only to warrantable defects that continue to exist after repairs.³¹ The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In part, the subject vehicle's warranty states that:

Subject to the other terms and conditions of this limited warranty manual, Kia Motors America, Inc. ("Kia") warrants that it will arrange for an Authorized Kia dealer at locations of its choice to provide for the repair of your vehicle if it fails to function properly during normal use. Authorized service facilities will remedy such failures to function properly at Kia's expense, if you present your vehicle to such a service facility during its normal operating hours, provide sufficient information to permit a proper identification and diagnosis of the failure to function, and permit the facility adequate time to perform the necessary repair.³²

Additionally, the warranty provides that: "Service Adjustments are covered for the first 12 months/12,000 miles. Service adjustments means minor repairs not usually associated with the replacement of parts, such as wheel balance and alignment, freeplay or tension adjustments of cables, belts, levers and pedals, engine adjustments (idle speed, etc.), body parts and fittings."³³ A

³⁰ As noted in the discussion of applicable law, a respondent is deemed to have had an opportunity to cure when responding to a notice of defect with an offer to settle. Although characterized as a good will payment, the payment requires a release, indicating that the payment is a settlement in nature.

³¹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³² Respondent's Ex. 1, 2020 Warranty and Consumer Information Manual.

³³ Respondent's Ex. 1, 2020 Warranty and Consumer Information Manual.

defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer's specifications (nonconformity).³⁴ The vehicle's limited warranty does not guarantee satisfactory performance. Even though a condition may be unintended and unwanted, the Lemon Law provides no relief unless the condition constitutes a nonconformity. The Complainant averred that the issues with the vehicle shutting off and the tire pressure were resolved, leaving the engine oil consumption and drifting/alignment issues to address in this proceeding.

1. Engine Oil Consumption

A preponderance of the evidence does not show that the vehicle currently has a problem with oil consumption. Although the oil was three quarts low on March 11, 2020, at 13,074, miles, 6,856 miles after the last oil change, subsequent tests showed normal oil consumption. The July 8, 2020, repair order concluded that the vehicle passed the oil consumption test with no problems found. Also, a June 22, 2020, entry in the Techline case detail states that one quart in 3,517 miles (from 14,179 to 17,696 miles on the odometer) falls within the guideline of acceptable oil consumption.³⁵ The complete three-step oil consumption test showed the following:

Odometer Miles	Miles Elapsed	Oil Consumed
17,696 to 18,931	1,235	0.0 quarts
18,931 to 20,083	1,152	0.4 quarts
20,083 to 21,022	939	0.65 quarts ³⁶
	3,326	1.05 quarts

Overall, the vehicle consumed 1.05 quarts of oil in 3,326 miles, comparable to the one quart in 3,517 miles, which satisfies the guideline for acceptable consumption. For comparison, the vehicle consumed three quarts of oil in 6,218 miles from the oil change on December 17, 2019, to the service visit on March 11, 2020 (however, the evidence does not show what amount exceeds the guideline for acceptable consumption). Given the available information, a preponderance of the evidence does not show that the vehicle has an existing oil consumption nonconformity.

³⁴ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.--Texarkana 1985), aff'd in part on other grounds, rev'd in part on other grounds, 715 S.W.2d 629 (Tex. 1986) ("Manufacturing defect cases involve products which are flawed, i.e., which do not conform to the manufacturer's own specifications, and are not identical to their mass-produced siblings.").

³⁵ Respondent's Ex. 2, Case Detail, K-Support.

³⁶ A discrepancy exists between the oil consumed as shown in the August 29, 2020, repair order (0.065 quarts) and the respondent's testimony (0.65 quarts). The repair order's figure appeared to have been in error.

2. Drifting/Alignment

The October 19, 2019, repair order notes that the alignment was still within factory specifications: “The before measurements show that, with a zero steer-ahead, the individual toe angles were within factory specs therefore no adjustments were necessary.” Accordingly, the dealer addressed the alignment internally because the Respondent did not cover this issue under warranty. Although the vehicle may have drifted, the alignment still conformed to specifications. Consequently, the drifting/alignment issue does not constitute a warrantable defect that qualifies for relief.

III. Findings of Fact

1. On September 28, 2019, the Complainant, purchased a new 2020 Kia Soul from Southwest Kia, a franchised dealer of the Respondent, in Mesquite, Texas. The vehicle had 28 miles on the odometer at the time of purchase.
2. The vehicle’s limited warranty provides basic coverage for 60 months or 60,000 miles, whichever occurs first; power train coverage for 120 months or 100,000 miles, whichever occurs first; and service adjustments coverage for 12 months or 12,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer as shown below:

Date	Miles	Issue
October 19, 2019	2,063	Vehicle pulls to the right
December 17, 2019	6,856	Oil and filter change (routine maintenance), no start, tire pressure light
March 11, 2020	13,074	Thumping/rattling when accelerating (start oil consumption test)
April 9, 2020	14,179	Check oil (oil consumption test continued)
June 10, 2020	17,696	Oil consumption test
July 8, 2020	18,931	Oil test
August 1, 2020	20,083	Oil consumption test
August 29, 2020	21,022	Oil consumption test

4. The Complainant believed she provided a notice of defect to the Respondent on March 13, 2020. However, the record does not include a copy of the notice.
5. On June 10, 2020, the Complainant filed a complaint with the Texas Department of Motor Vehicles alleging that: the vehicle drifted to the left; the vehicle shut off three different

- times; the tire pressure (TPMS) light came on; and the engine seemed loud and had low oil.
6. The issues concerning the vehicle shutting off and the tire pressure light were resolved.
 7. On August 12, 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 October 28, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented herself. Hope Bushnell, Consumer Affairs Analyst, Leo McAdams, Field Technical Representative, and Chris Besser, District Parts and Service Manager, represented the Respondent.
 9. The vehicle's odometer displayed 22,831 miles at the time of the hearing.
 10. The warranty's basic and power train coverage were in effect at the time of the hearing.
 11. The service adjustment coverage, which applies to the alignment, expired at 12,028 miles on the odometer.
 12. During the incomplete oil consumption test (from 14,179 to 17,696 miles on the odometer), the vehicle consumed one quart of oil in 3,517 miles, which fell within the guideline of acceptable oil consumption.
 13. The record does not show the maximum acceptable oil consumption.
 14. The July 8, 2020, repair order concluded that the vehicle passed the oil consumption test with no problems found.
 15. During the complete oil consumption test (from 17,696 miles to 21,022 miles on the odometer), the vehicle consumed 1.05 quarts of oil in 3,326 miles.
 16. The vehicle's alignment conformed to the manufacturer's specifications.

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 currently existing defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 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.
8. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. 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**.

SIGNED December 30, 2020



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