**TEXAS DEPARTMENT OF MOTOR VEHICLES**
**CASE NO. 20-0012822 CAF**

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| **GREGORY UPAH,** | **§** | **BEFORE THE OFFICE** |
| **Complainant** | **§** | |
| | **§** | |
| **v.** | **§** | **OF** |
| | **§** | |
| **NISSAN NORTH AMERICA, INC.,** | **§** | |
| **Respondent** | **§** | **ADMINISTRATIVE HEARINGS** |

# DECISION AND ORDER

Gregory Upah (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 Nissan North America, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a 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 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 October 14, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself herself. Jesse Juan, Arbitration Specialist, 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] 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 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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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.

[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 July 27, 2018, the Complainant, purchased a new 2018 Infiniti Q50 from Sewell Infiniti, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had 35 miles on the odometer at the time of purchase. The vehicle's limited warranty provides basic coverage for 48 months 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 June 12, 2020, the Complainant provided a written notice of defect to the Respondent. On June 25, 2020, the Complainant filed a complaint with the Department alleging that the Forward Emergency Braking (FEB) did not warn or brake when a forward collision was imminent. The Complainant testified that the subject vehicle would collide with large objects without any warning or any "dramatic" braking on almost every test. He first noticed FEB not functioning in May of 2020. His foot slipped off the brake while driving into the garage and the vehicle crashed into a metal table. He thought a warning light should have appeared or something Should have happened. When driving in situations when he thought FEB should come on, FEB worked perfectly maybe one out of 25 different trials by the dealer and a third-party repair facility. He last noticed a FEB malfunction a few weeks before the hearing. The Complainant testified that during a test (of the Rear Automatic Braking (RAB)), when driving back into objects, the car did not give a warning until after impact. Warnings came on and heavy braking came on abruptly in one of eight trials. He elaborated that the front system did beep and the rear system seemed to work more than occasionally. He thought the only time the rear warning malfunctioned was during a test when backing into a large box and plastic garbage can and during an informal test in the driveway driving into a garbage can. The RAB not brake. Sometimes it did not work at all and sometimes it seemed to function. He last noticed a RAB malfunction during a test a few weeks before the hearing when the vehicle did not provide a warning before impact with a large box and large garbage can. At one visit to the dealer, the service advisor brought a large box out and the vehicle crashed into the boxes without warning in about 10 tries. Prior to that visit, the vehicle was driven close behind other vehicles and the brake applied at the last minute. The vehicle would beep but nothing other than that. The Complainant described that Mr. Evan Spector used a large cardboard box and a plastic trash can. In seven of eight attempts, the vehicle crashed into the objects. One time, the FEB worked exactly as expected. Dealer's own testing showed did not work. Independent repair facility test showed did not work. My test showed mostly did not work. Mr. Spector testified that, in the video recorded a few weeks before the hearing, he tried to keep the vehicle between five and ten miles per hour. He stated that, when testing the vehicle, he was surprised that the FEB worked once, providing a warning and applying the brakes by itself. The Complainant elaborated that before the trials on video, they performed a couple other trials using a large cardboard box and garbage can. The vehicle worked perfectly once and did not work seven other times.

### C. Summary of Respondent's Evidence and Arguments

Mr. Juan asserted that the subject vehicle did not meet the criteria for reasonable repair attempts. The vehicle had one repair attempt for FEB. Further, the Respondent contended that the vehicle did not have a nonconformity. The owner's manual describes the FEB function at page 5-105. FEB is a supplemental aid, not a replacement for driver safety. FEB does not function in all traffic and driving conditions. Page 5-108 addresses limitations of the FEB system, which does not detect all vehicles under all conditions. The Complainant mentioned colliding with a metal table in his garage and testing the FEB with a cardboard box and garbage cans. Nowhere does the owner's manual say the vehicle was designed to avoid a crash with these objects. Rather, FEB was designed to detect vehicles. A scan tool, no error codes. Additionally, a dealership technician noted that during a test drive, the subject vehicle beeped when a vehicle in front slowed down to turn. The test by the employee of the dealer, not the Respondent, driving into a cardboard box was not an adequate assessment. No codes were stored. The Respondent surmised the vehicle did not have a nonconformity. On cross-examination, Mr. Juan affirmed that the test drive and scanning for codes were sufficient to determine that no action was necessary and that the cardboard box crash test was not acceptable.

John Howell, dealer technical specialist, explained that when the technicians could see the (FEB) distance sensor actually reading. However, the calculations that went into the FEB system braking were complicated. The Respondent did not recommend testing FEB because of a possible crash. FEB was not designed to function with a cardboard box. On cross-examination, Mr. Howell elaborated that the Complainant's experience with FEB and with the crash into the metal table did not indicate an issue with the vehicle. He pointed out that FEB looked for the signature of a car. For example, a corvette, which has a fiberglass exterior, still has lots of metal. Also, FEB does not operate under three mph. He added that the only way to test the FEB may be to crash the vehicle. Thought the sensor showed the vehicle closing (the distance to a vehicle ahead), FEB required more than that to activate. If the vehicle were not closing fast enough, FEB would not activate. FEB was only for an emergency. FEB and the predictive forward collision warning, which the Complainant saw working, were closely related, and showed, at least to a degree, that the FEB functioned. Mr. Howell pointed out that the FEB system would assume that a foot on the brake indicated the driver was in control, so FEB would not come on.

## D. Analysis

A preponderance of the evidence shows that the complained of issues arise from the vehicles design and not from any warrantable defects. 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) that continues to exist after repairs.[27] 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 warranty generally states that:

> The warranty covers any repairs needed to correct defects in materials or workmanship of all parts and components of each new Infiniti vehicle supplied by Infiniti subject to the exclusions listed under the heading "WHAT IS NOT COVERED" or, if the part is covered by one of the separate coverages described in the following sections of this warranty, that specific coverage applies instead of the basic coverage.[28]

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).[29] A defectively manufactured vehicle has a flaw because of some error in making it at the factory, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics or design defects are not warrantable defects. Design characteristics and design defects result from the vehicle's specified design, which exists before manufacturing, and not from any error during

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

[28] Complainant's Ex. 1, 2018 Warranty Information Booklet.

[29] 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.").

manufacturing.[30] Because the warranty only covers manufacturing defects, any non-manufacturing problems do not qualify for relief. In this case, the evidence shows that the vehicle is designed to detect vehicles as opposed to other objects. The owner's manual explains that: "The FEB system can assist the driver when there is a risk of a forward collision with the **vehicle** ahead in the traveling lane."[31] Although FEB is designed to detect vehicles, the owner's manual warns that: "The FEB system cannot detect all vehicles under all conditions"[32] Moreover, "[t]he FEB system does not function in all driving, traffic, weather and road conditions."[33] And most significantly, the owner's manual warns that the FEB system has limitations, in particular:

> The radar sensor does not detect the following objects:
> — Pedestrians, animals or **obstacles in the roadway**
> — Oncoming vehicles
> — Crossing vehicles[34]

Consequently, the vehicle's rolling into a metal table and crash tests with cardboard boxes, and garbage cans would not reflect the actual operation of FEB as designed. Rather, the evidence reflects that accurately testing the emergency braking would require putting the vehicle at risk of actually crashing into another vehicle. In sum, a preponderance of the evidence does not show that the vehicle has a warrantable defect that supports any relief.

## III. Findings of Fact

1. On July 27, 2018, the Complainant, purchased a new 2018 Infiniti Q50 from Sewell Infiniti, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had 35 miles on the odometer at the time of purchase.

2. The vehicle's limited warranty provides basic coverage for 48 months or 60,000 miles, whichever occurs first.

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[30] In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

[31] Respondent's Ex. 1, 2018 Owner's Manual and Maintenance Information at 5-105 (emphasis added).

[32] Respondent's Ex. 1, 2018 Owner's Manual and Maintenance Information at 5-108 (emphasis added).

[33] Respondent's Ex. 1, 2018 Owner's Manual and Maintenance Information at 5-105 (emphasis added).

[34] Respondent's Ex. 1, 2018 Owner's Manual and Maintenance Information at 5-108 (emphasis added).

3. The warranty generally provides that:

> The warranty covers any repairs needed to correct defects in materials or workmanship of all parts and components of each new Infiniti vehicle supplied by Infiniti subject to the exclusions listed under the heading ”WHAT IS NOT COVERED” or, if the part is covered by one of the separate coverages described in the following sections of this warranty, that specific coverage applies instead of the basic coverage.[35]

4. The warranty only covers manufacturing defects and does not cover the design of the vehicle.

5. On June 12, 2020, the Complainant provided a written notice of defect to the Respondent.

6. On June 25, 2020, the Complainant filed a complaint with the Department alleging that the Forward Emergency Braking (FEB) did not warn or brake when a forward collision was imminent.

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 14, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself herself. Jesse Juan, Arbitration Specialist, represented the Respondent.

9. The Complainant concluded that the subject vehicle did not function based on a collision with a metal table while pulling into a garage and crash tests with a cardboard box and a trash can.

10. The vehicle’s owner’s manual states: “The FEB system can assist the driver when there is a risk of a forward collision with the vehicle ahead in the traveling lane.”

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[35] Complainant’s Ex. 1, 2018 Warranty Information Booklet.

11. The FEB system is designed to detect vehicles.

12. The vehicle's owner's manual also states that:

> The radar sensor does not detect the following objects:
> — Pedestrians, animals or obstacles in the roadway
> — Oncoming vehicles
> — Crossing vehicles[36]

13. The FEB system is not designed to detect obstacles on the road.

## 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 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.

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[36] Respondent's Ex. 1, 2018 Owner's Manual and Maintenance Information at 5-108 (emphasis added).

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 11, 2020**

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