

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0000829 CAF**

**GABRIEL ARGUELLO,
Complainant**

v.

**JAGUAR LAND ROVER NORTH
AMERICA, LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Gabriel Arguello (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 distributed by Jaguar Land Rover North America, LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that qualifies 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 test drive portion of the hearing convened on December 10, 2020, in Houston, Texas and the remainder of the hearing convened on December 16, 2020, by videoconference before Hearings Examiner Andrew Kang. The record closed on January 11, 2021. Jourdain Poupore, attorney, represented the Complainant. John Chambless, attorney, represented the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.² 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.”³ 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.⁴ 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.⁵

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

² TEX. OCC. CODE § 2301.603.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁶

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.”⁷

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.⁸

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

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁷ *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.”).

⁸ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

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.¹⁰

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.¹¹

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.¹² 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.¹³

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;¹⁴ (2) the respondent was given an opportunity to cure the defect or

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(c).

¹² *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.’”).

¹³ *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.”).

¹⁴ 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).

nonconformity;¹⁵ and (3) the Lemon Law complaint was filed within six months after the earliest 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.¹⁶

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.¹⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁸

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁹ 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.²⁰ 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.²¹ The complaint must state “sufficient facts to enable the department and the party complained against to know the nature

¹⁵ 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 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.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

¹⁷ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 215.66(d).

²⁰ *E.g.*, *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

²¹ “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.

of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”²² However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵

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.²⁶ 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).²⁷ However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁸

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) (“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.”).

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

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

²⁴ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁵ *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁶ TEX. OCC. CODE § 2301.604.

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

B. Summary of Complainant's Evidence and Arguments

On March 21, 2020, the Complainant, purchased a new 2019 Land Rover Range Rover from Land Rover Southwest Houston, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 82 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.

On June 2, 2020, the Complainant provided a written notice of defect to the dealer. However, the record does not show a written notice of defect provided to the Respondent before the notice provided by the Department in this case. On September 21, 2020, the Complainant filed a complaint with the Department alleging that the vehicle exhibited vibration at certain speeds and a suspension fault message. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
May 12, 2020- May 18, 2020	739	Steering wheel shakes at 65 mph
May 19, 2020	743	Vehicle vibrating at 50-70 mph
June 2, 2020- June 11, 2020	1,000	Vehicle vibrating at freeway speeds
June 26, 2020- October 17, 2020	2,424	Vehicle pulsates at 40-50 mph and decreases/changes at 70-80 mph; suspension fault
October 14, 2020- November 10, 2020	2,628	Vehicle vibrates at 80 mph

The Complainant testified that he did not initially notice the vibration after purchase of the vehicle. Due to the pandemic, the Complainant left the vehicle parked for over 30 days but took the vehicle for service soon after driving. The dealer initially diagnosed the vibration's cause as tire flat spotting. Towards the beginning, the dealer changed the tires and wheels three or four times. Later, the dealer replaced the axle (half) shafts (at the June 26, 2020 visit). Before replacement of the half shafts, the Complainant emailed a notice of defect to a service advisor at the dealership. After keeping the vehicle for a few days after repair, the Complainant took the vehicle to a dealer in Katy and back to Land Rover Southwest Houston. The Complainant believed that the Respondent had requested the dealer to replace the tires and wheels but the dealer's manager had the half shafts changed. The dealer did not explain the reason for the repair and did not share the results from the computers. The vehicle continued to have a problem after the half

shaft replacement. The Complainant and a dealer employee test drove the subject vehicle and another like model vehicle. On two different dates, a suspension fault message came up. The dealership did not provide any explanation for the suspension fault message.

On cross-examination the Complainant testified that he did not put any cash down for purchasing the vehicle. He did not know why the installment sales contract showed a negative trade-in of \$16,123.00 but appeared different in other sales documentation. The Complainant explained that the dealer in Katy had no loaners and asked him to return later, after which he went to Land Rover Southwest Houston. He clarified that he complained to the Respondent by phone and the e-mail (Complainant's Ex. 10) was a response to the call. The Complainant acknowledged not sending any letters to the Respondent before the phone call. Instead, the Department's case advisor provided a notice to the Respondent with a copy of the e-mail. The Complainant confirmed consulting with an attorney as early as June 2020 (as reflected in a June 14, 2020 e-mail). He testified that he returned loaner vehicles by the dates requested.

On re-direct examination, the Complainant testified that he sent an e-mail (Complainant's Ex. 5) on June 2, 2020, to the dealer. Additionally, the Department's case advisor sent the complaint to the Respondent.

C. Inspection

The subject vehicle was inspected and test driven on December 10, 2020. The vehicle had 2,696 miles on the odometer before the test drive. The vehicle was driven predominantly on freeways and frontage roads near Land Rover Southwest Houston. The test drive ended with 2,712 miles on the odometer. The vehicle exhibited a discrete vibration at highway speeds.

D. Summary of Respondent's Evidence and Arguments

The Respondent asserted that the warranty did not cover the alleged vibration.

E. 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 defect covered under warranty (warrantable defect).

Lemon Law relief does not apply to all problems that may occur with a vehicle but only to warrantable defects that continue to exist (i.e., currently exist) after repairs.²⁹ 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 generally states that:

JLRNA warrants that during the warranty period, if a Land Rover vehicle is properly operated and maintained, repairs required to correct defects in factory-supplied materials or factory workmanship will be performed without charge upon presentment for service at an authorized Land Rover retailer; any component covered by this warranty found to be defective in materials or workmanship will be repaired, or replaced, without charge with a new or remanufactured part distributed by JLRNA at its sole option.

The warranty period for the vehicle begins on the date of the first retail sale, or on the date of entry into demonstrator or company service, whichever occurs first. The basic warranty period is for four (4) years or until the vehicle has been driven 50,000 miles, whichever occurs first.³⁰

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³¹ Additionally, the warranty excludes vibrations that the Respondent deems to fall within specifications:

Normal noise and/or vibration. Your vehicle is a mechanical device, and all mechanical devices make some sort of noise and/or vibration. These noises and vibrations can differ from vehicle to vehicle, and JLRNA recognizes those noises as normal and characteristic of the product. JLRNA will determine whether vehicle noise is the result of a defect and exceeds normal noise standards for Land Rover vehicles.³²

²⁹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³⁰ Respondent's Ex. 1, Passport to Service.

³¹ 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.").

³² Respondent's Ex. 1, Passport to Service (emphasis added).

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer's specifications, and is not identical to other same model vehicles.³³ Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a warrantable defect.

As shown above, the warranty indicates that the Respondent, as opposed to a dealer, will determine whether a vibration results from a defect. The warranty specifies that: "JLRNA will determine whether vehicle noise is the result of a defect and exceeds normal noise standards for Land Rover vehicles." The warranty appears to use "noise" to refer to "noise and/or vibration." To start, the warranty categorizes "noise and/or vibration" under the same warranty exclusion. Also, the warranty states that: "[t]hese noises and vibrations can differ from vehicle to vehicle, and JLRNA recognizes those noises as normal and characteristic of the product." Grammatically, the term "those noises" appears to refer to "noises and vibrations" as the antecedent. Because a warranty is contractual in nature, the warranty terms are given their plain and ordinary meaning. The dictionary defines "vibration" as: "a periodic motion of the particles of an elastic body or medium in alternately opposite directions from the position of equilibrium when that equilibrium has been disturbed (as when a stretched cord produces musical tones or molecules in the air transmit sounds to the ear)."³⁴ This definition illustrates that sound is a type of vibration. Significantly, the dictionary defines "noise" as: "SOUND . . . *especially*: one that lacks an agreeable quality or is noticeably unpleasant or loud."³⁵ Accordingly, the warranty's use of noise to also refer to vibration appears consistent with the overlapping meanings of noise and vibration. Hence, the Respondent's determination of whether a noise or vibration constitutes a defect controls the applicability of the warrantability.

In this case, the repair history reflects that the Respondent determined that the vibration did not fall outside the vehicle's normal specifications. The June 2, 2020, repair invoice shows the

³³ *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.").

³⁴ Vibration. Merriam-Webster Dictionary. Merriam-Webster, Incorporated. <https://www.merriam-webster.com/dictionary/vibration>.

³⁵ Noise. Merriam-Webster Dictionary. Merriam-Webster, Incorporated. <https://www.merriam-webster.com/dictionary/noise>.

dealer initially contacted the Respondent's technical assistance (TA) line, which suggested replacing the wheels and tires. The June 26, 2020, repair invoice states that the dealer performed multiple noise, vibration, and harshness (NVH) traces at the request of the Respondent's TA/engineering, after which TA requested the dealer to replace the half shafts. The October 14, 2020, repair invoice specifies that the Respondent's engineering requested NVH traces of the subject vehicle and a like vehicle for comparison. After reviewing the traces, engineering requested the dealer to road force balance the subject vehicle's tires and the dealer submitted the results of the balancing to TA/engineering, which

found no further diagnosis needed. In essence, the Respondent determined that any vibration did not exceed normal specifications. Because the Respondent's determination dictates the warrantability of noise and vibration issues, the vibration does not constitute a defect that qualifies for relief.

III. Findings of Fact

1. On March 21, 2020, the Complainant, purchased a new 2019 Land Rover Range Rover from Land Rover Southwest Houston, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 82 miles on the odometer at the time of purchase.

2. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.

3. The vehicle's warranty generally states:

JLRNA warrants that during the warranty period, if a Land Rover vehicle is properly operated and maintained, repairs required to correct defects in factory-supplied materials or factory workmanship will be performed without charge upon presentment for service at an authorized Land Rover retailer; any component covered by this warranty found to be defective in materials or workmanship will be repaired, or replaced, without charge with a new or remanufactured part distributed by JLRNA at its sole option.

4. Under "Other Items and Conditions not Covered by This Warranty" the vehicle's warranty states the following:

Normal noise and/or vibration. Your vehicle is a mechanical device, and all mechanical devices make some sort of noise and/or vibration. These noises and vibrations can differ from vehicle to vehicle, and JLRNA recognizes those noises

as normal and characteristic of the product. JLRNA will determine whether vehicle noise is the result of a defect and exceeds normal noise standards for Land Rover vehicles.

5. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
May 12, 2020- May 18, 2020	739	Steering wheel shakes at 65 mph
May 19, 2020	743	Vehicle vibrating at 50-70 mph
June 2, 2020- June 11, 2020	1,000	Vehicle vibrating at freeway speeds
June 26, 2020- October 17, 2020	2,424	Vehicle pulsates at 40-50 mph and decreases/changes at 70-80 mph; suspension fault
October 14, 2020- November 10, 2020	2,628	Vehicle vibrates at 80 mph

6. On June 2, 2020, the Complainant provided a written notice of defect to the dealer. However, the record does not show a written notice of defect provided to the Respondent before the notice provided by the Department in this case.
7. On September 21, 2020, the Complainant filed a complaint with the Department alleging that the vehicle exhibited vibration at certain speeds and a suspension fault message.
8. On October 29, 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.
9. The test drive portion of the hearing convened on December 10, 2020, in Houston, Texas and the remainder of the hearing convened on December 16, 2020, by videoconference before Hearings Examiner Andrew Kang. The record closed on January 11, 2021. Jourdain Poupore, attorney, represented the Complainant. John Chambless, attorney, represented the Respondent.
10. The vehicle's warranty was in effect at the time of the hearing.

11. The vehicle was inspected and test driven on December 10, 2020. The vehicle had 2,696 miles on the odometer before the test drive. The vehicle was driven predominantly on freeways and frontage roads near Land Rover Southwest Houston. The test drive ended with 2,712 miles on the odometer. The vehicle exhibited a discrete vibration at highway speeds during the test drive.
12. Under the warranty, the Respondent determines whether a vehicle noise/vibration results from a defect and exceeds normal standards.
13. The Respondent determined that the alleged vibration was not a warranted defect.

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.

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 March 16, 2021



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