

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0006089 CAF**

<b>ALLEN SMALL,</b>	§	
<b>Complainant</b>	§	
	§	<b>BEFORE THE OFFICE</b>
<b>v.</b>	§	
	§	
<b>HYUNDAI MOTOR AMERICA, INC.,</b>	§	<b>OF</b>
<b>Respondent</b>	§	
	§	
<b>and</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	
<b>HYUNDAI LEASE TITLING TRUST,</b>	§	
<b>Intervenor</b>	§	

**DECISION AND ORDER**

Allen Small (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2018 Genesis G90 Ultimate. Complainant asserts that the vehicle has a parasitic draw which periodically drains the battery and makes it impossible to start the vehicle. Hyundai Motor America, Inc. (Respondent) argued that the vehicle has been repaired, that no defect or nonconformity currently exists in the vehicle, and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repurchase relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened via Microsoft Teams on July 8, 2021, before Hearings Examiner Edward Sandoval. David Alexander, attorney with The Law Office of David W. Alexander, PLLC, represented Allen Small, Complainant, at the hearing. Mr. Small was present to offer testimony. Hyundai Motor America, Inc., Respondent, and Hyundai Lease Title Trust, Intervenor, were represented by Susan Lucas, contract representative. The hearing was continued to July 21, 2021, in order to allow the parties to discuss a possible settlement of the complaint.

The hearing continuance was conducted via Microsoft Teams by Hearings Examiner Edward Sandoval on July 21, 2021. David Alexander, attorney with The Law Office of David W. Alexander, PLLC, represented Allen Small, Complainant, at the hearing. Mr. Small was present to offer testimony. Hyundai Motor America, Inc., Respondent, and Hyundai Lease Title Trust, Intervenor, were represented by Susan Lucas, contract representative. The hearing record closed on July 21, 2021.

## II. DISCUSSION

### A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to these conditions, a rebuttable presumption can be established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the 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 repair 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.<sup>6</sup>

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has 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.<sup>7</sup>

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.<sup>8</sup>

Finally, a rebuttable presumption can be established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs 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.<sup>9</sup>

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner’s vehicle is being repaired by a franchised dealer.<sup>10</sup>

## **B. Complainant’s Evidence and Arguments**

Complainant leased a new 2018 Genesis G90 Ultimate on August 13, 2018, from Ron Carter Cadillac–Hyundai–Saab (Carter) located in Friendswood, Texas.<sup>11</sup> The vehicle’s mileage at the time of delivery was 382.<sup>12</sup> After the lease was signed, Carter assigned the vehicle lease to Hyundai Lease Titling Trust (Intervenor).<sup>13</sup> Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for five (5) years or 60,000 miles, whichever comes first. On the date of the initial hearing the vehicle’s mileage was 8,780 miles and the vehicle’s warranty was still in effect.

Complainant testified that prior to April 21, 2020, he had a few incidents where the vehicle would not start due to a dead battery. On those occasions, Complainant was able to jump start the vehicle. However, on April 21, 2020, the vehicle failed to start even when he attempted to jump start it. Complainant contacted a tow company to come to the vehicle’s location and try to jump start it, but they were unable to do so. The vehicle was towed to Carter for repair for the issue that same day. Carter’s service technician verified the issue and performed a battery test on the vehicle’s battery.<sup>14</sup> The battery did not pass the test, so Carter’s technician replaced the battery

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<sup>8</sup> Tex. Occ. Code § 2301.601(4).

<sup>9</sup> Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

<sup>10</sup> Tex. Occ. Code § 2301.605(c).

<sup>11</sup> Complainant Ex. 2, Motor Vehicle Lease Agreement dated August 13, 2018.

<sup>12</sup> Complainant Ex. 3, Odometer Disclosure Statement dated August 13, 2018.

<sup>13</sup> Complainant Ex. 2, Motor Vehicle Lease Agreement dated August 13, 2018.

<sup>14</sup> Complainant Ex. 4, Repair Order dated April 21, 2020.

and checked the vehicle's charging system to repair the issue.<sup>15</sup> The vehicle's mileage on this occasion was 6,203.<sup>16</sup> The vehicle was in Carter's possession at least two (2) days on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired. Complainant testified that he had no problem starting the vehicle when he picked it up from Carter after the repair.

Complainant stated that on April 27, 2020, the vehicle again failed to start. He was unable to unlock the vehicle's doors or shift the vehicle's transmission in to neutral. He took the vehicle to Carter for repair for the issue that same day. Carter's service technician verified the issue and determined that the vehicle's alternator was not charging the battery.<sup>17</sup> The technician replaced the vehicle's alternator assembly in order to address the issue.<sup>18</sup> The vehicle's mileage on this occasion was 6,235.<sup>19</sup> The vehicle was in Carter's possession until May 7, 2020. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The vehicle started up immediately when Complainant picked it up from Carter.

Complainant stated that a few days after picking up the vehicle from Carter, the vehicle again failed to start. Complainant had the vehicle towed to Carter for repair for the issue on May 11, 2020. Carter's service technician again verified the issue.<sup>20</sup> The technician replaced the battery, but warning lights came on which required that he check the vehicle's fuses.<sup>21</sup> The technician replaced a maxi fuse and a 200 amp midi fuse as a result.<sup>22</sup> The technician then performed a parasitic draw test on the vehicle and determined that the vehicle's head unit was draining the battery and replaced it.<sup>23</sup> The vehicle's mileage at the time was 6,240.<sup>24</sup> The vehicle was in Carter's possession until June 8, 2020 during this repair. Complainant was provided a loaner vehicle while his vehicle was being repaired. Complainant testified that when he picked up the vehicle, it started immediately.

The vehicle again failed to start on October 15, 2020. Complainant again had the vehicle towed to Carter for repair that same day. Carter's service technician verified the issue and recharged the battery.<sup>25</sup> The battery recharged and tested fine, so the technician performed a parasitic draw test

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Complainant Ex. 5, Repair Order dated April 27, 2020.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Complainant Ex. 6, Repair Order dated May 11, 2020.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Complainant Ex. 7, Repair Order dated October 15, 2020.

on the vehicle.<sup>26</sup> There was no indication of a parasitic draw, so no other repairs were performed at the time.<sup>27</sup> Complainant was informed by Carter's service advisor that Respondent's field service engineer (FSE) suggested that Complainant drive the vehicle at least 20 miles per day or install a battery maintainer in the vehicle to prevent the issue from recurring.<sup>28</sup> The vehicle's mileage on this occasion was 7,191.<sup>29</sup> The vehicle was in Carter's possession until November 11, 2020, on this occasion.<sup>30</sup> Complainant was provided with a loaner vehicle while his vehicle was being repaired.

The vehicle again failed to start on December 14, 2020. Complainant had the vehicle towed to Carter that same day for repair. Carter's service technician verified the concern and contacted Respondent's FSE for help in diagnosing the cause of the drain on the vehicle's battery.<sup>31</sup> The technician replaced the vehicle's front end module harness and hood latch pursuant to the FSE's instructions.<sup>32</sup> In addition, the technician replaced the vehicle's battery for customer satisfaction.<sup>33</sup> The vehicle's mileage on this occasion was 7,263.<sup>34</sup> The vehicle was in Carter's possession for eight (8) days on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 5, 2021.<sup>35</sup> On February 18, 2021, Complainant's attorney wrote a letter to Respondent advising them of Complainant's dissatisfaction with the vehicle.<sup>36</sup>

Complainant stated that sometime between December of 2020 and April of 2021, he obtained a battery maintainer as suggested by Respondent's FSE. In addition, he started driving the vehicle at least 20 miles per day when he could. The issue with the battery not maintaining charge has not occurred since December of 2020. Complainant feels that the issues with the vehicle constitute a safety concern because when the vehicle fails to start, he cannot open the vehicle's doors or shift the transmission to neutral.

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Complainant Ex. 8, Repair Order dated December 14, 2020.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Complainant Ex. 1, Lemon Law Complaint dated February 5, 2021.

<sup>36</sup> Complainant Ex. 10, Letter to Genesis Motor America dated February 18, 2021.

### **C. Respondent's Evidence and Arguments**

Susan Lucas, contract representative, appeared for Respondent. She stated that she has never personally seen the vehicle. She did not offer testimony regarding the underlying issues with the vehicle.

### **D. Analysis**

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant's concern with the vehicle is that he has experienced several occasions where the vehicle's battery has been drained and the vehicle will not start, nor can he jump start the vehicle, open the car's door if it's locked, or shift the vehicle's transmission to neutral.

Respondent's authorized dealer's service technicians have made several attempts to repair the vehicle and the only fix that seems to have worked is for Complainant to either drive the vehicle at least 20 miles per day or to attach a battery maintainer to the battery to keep it charged. It is not reasonable for the owner of a vehicle that is three (3) years old be required to do anything to have a vehicle's battery maintain its charge for more than 24 hours. As such, the hearings examiner must hold that Complainant has met the burden of persuasion to establish the existence of a defect or nonconformity in the subject vehicle. Although Respondent may argue that the vehicle was repaired during the last repair performed on December 14, 2020, there is no evidence to indicate that this is true. The issue may not have occurred again because Complainant is driving the vehicle at least 20 miles per day or the battery maintainer has worked to keep the battery charged. The defect or nonconformity with the vehicle substantially impairs the use or market value of the vehicle, as Complainant cannot rely on the vehicle to start if he does not drive it on a daily basis or attach the battery maintainer to the battery. In addition, the vehicle's market value

is adversely affected as it would be difficult to sell the vehicle at market price with this issue occurring.

Complainant also presented evidence to indicate that Respondent or its authorized representative was provided with a reasonable number of repair attempts to repair the defect or nonconformity with the vehicle. Complainant presented the vehicle to Respondent's authorized dealer on five (5) separate occasions for repair for the complained of issue prior to the filing of the Lemon Law complaint: April 21, 2020; April 27, 2020; May 11, 2020; October 15, 2020; and December 14, 2020. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) provides that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the 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 repair 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. In the present case, although only three (3) of the repair attempts were made prior to the 24 month period from the date of delivery, the fourth attempt was only two (2) months after the time frame passed and all of the attempts were performed prior to the vehicle being driven 8,000 miles. As such, the hearings examiner will hold that Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent's authorized dealer and the vehicle has not been repaired.

In addition, the evidence presented at the hearing indicates that Complainant provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainant's attorney informed Respondent via letter dated February 18, 2020, of Complainant's concerns with the vehicle and providing Respondent with an opportunity to cure. Respondent did not avail themselves of the opportunity to cure.

Although Respondent has been provided adequate opportunity to repair the vehicle and to ensure that it operates properly, they have not been able to repair the vehicle so that it conforms to their written warranty. As such, Complainant has met his burden of persuasion to establish that the vehicle has a warrantable and existing defect or condition which substantially impairs the use or market value of the vehicle. Therefore, the hearings examiner will order Respondent to repurchase the vehicle as requested by Complainant.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

### III. FINDINGS OF FACT

1. Allen Small (Complainant) leased a new 2018 Genesis G90 Ultimate on August 13, 2018, from Ron Carter Cadillac–Hyundai–Saab (Carter) located in Friendswood, Texas with mileage of 382 at the time of delivery.
2. After the lease was signed by Complainant and Carter, Carter assigned the lease to Hyundai Lease Titling Trust (Intervenor).
3. The manufacturer or distributor of the vehicle, Hyundai Motor America, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for the first five (5) years or 60,000 miles after delivery, whichever comes first.
4. The vehicle's mileage on the date of the initial hearing was 8,780.
5. At the time of hearing the vehicle's warranty was still in effect.
6. Complainant has experienced several situations where the vehicle's battery died and he was unable to start the vehicle, jump start the vehicle, open the vehicle's door, or shift gears on the vehicle's transmission. The vehicle had to be towed to Carter for repair on those occasions.
7. Complainant took the vehicle for repair to Respondent's authorized dealer, Carter, in order to address the issues outlined in Findings of Fact #6 on the following dates:
  - a. April 21, 2020, at 6,203 miles;
  - b. April 27, 2020, at 6,235 miles;
  - c. May 11, 2020, at 6,240 miles;
  - d. October 15, 2020, at 7,191 miles; and
  - e. December 14, 2020, at 7,263 miles.
8. On April 21, 2020, Carter's service technician verified the concern and replaced the vehicle's battery in order to address the issue.
9. On April 27, 2020, Carter's service technician verified the concern that the vehicle would not start. The technician determined that the vehicle's alternator was not charging the battery and replaced the alternator assembly in order to address the issue.



10. On May 11, 2020, Carter's service technician verified the concern about the vehicle not starting.
11. During the repair visit described in Findings of Fact #10, the service technician replaced the vehicle's battery, a multi fuse, a 200 amp midi fuse, and the head unit (after determining that the vehicle had a parasitic draw on the battery) in order to address Complainant's concern with the vehicle.
12. On October 15, 2020, Carter's service technician verified that the vehicle would not start and recharged the battery. No other repair was performed at the time.
13. During the repair visit described in Findings of Fact #12, Respondent's field service engineer (FSE) suggested to Complainant that he drive the vehicle at least 20 miles per day or install a battery maintainer to keep the battery charged, in order to prevent the failure to start issue from recurring.
14. On December 14, 202, Carter's service technician verified Complainant's concern with the vehicle not starting.
15. During the repair visit described in Findings of Fact #14, the technician inspected the vehicle to attempt to determine the cause of the vehicle's battery drain. In order to repair the concern, the technician replaced the vehicle's front end module harness and hood latch pursuant to Respondent's FSE's instructions. The technician also replaced the vehicle's battery for customer satisfaction.
16. On February 5, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
17. On February 18, 2021, Complainant's attorney mailed a letter to Respondent advising them that Complainant was dissatisfied with the vehicle.
18. Following Respondent's FSE's advice, Complainant is driving the vehicle at least 20 miles per day and/or attaching the vehicle's battery to a battery maintainer.
19. Respondent did not ask Complainant if they could inspect the vehicle or have a final opportunity to repair the vehicle prior to hearing.
20. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$69,087.58
Total paid at inception of lease	\$10,064.01
Monthly payment amount	\$814.01
Number of payments made at time of PFD issuance	36
Delivery mileage	382
Mileage at first report of defective condition	6,203
Mileage on hearing date	8,780
Useful life determination	120,000

Purchase price, including tax, title, license and registration										\$69,087.58
Mileage at first report of defective condition										6,203
Less mileage at delivery										<u>-382</u>
Unimpaired miles										5,821
Mileage on hearing date										8,780
Less mileage at first report of defective condition										<u>-6,203</u>
Impaired miles										2,577
Reasonable Allowance for Use Calculations										
Unimpaired miles										
										<u>5,821</u>
		120,000	X			\$69,087.58	=			\$3,351.32
Impaired miles										
						<u>2,577</u>				
		120,000	X			\$69,087.58	X .5	=		<u>\$741.83</u>
Total reasonable allowance for use deduction										\$4,093.15
Lessee's calculation:										
Total paid at inception of lease										\$10,064.01
Total amount for monthly payments										\$29,304.36
Less allowance for use										-\$4,093.15
Refund filing fee										<u>\$35.00</u>
<b>TOTAL REPURCHASE AMOUNT TO LESSEE:</b>										\$35,310.22
Lessor's Calculation:										
Purchase price, including tax, title, license and registration										\$69,087.58
5% allowance by Rule 215.208(B)(ii)										\$3,454.38
Less total paid by Lessee										<u>-\$39,368.37</u>
<b>TOTAL REPURCHASE AMOUNT TO LESSOR:</b>										\$33,173.59

21. On March 16, 2021, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties 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 matters asserted.

22. The hearing in this case convened via Microsoft Teams on July 8, 2021, before Hearings Examiner Edward Sandoval. David Alexander, attorney with The Law Office of David W. Alexander, PLLC, represented Allen Small, Complainant, at the hearing. Mr. Small was present to offer testimony. Hyundai Motor America, Inc., Respondent, and Hyundai Lease Title Trust, Intervenor, were represented by Susan Lucas, contract representative. The hearing was continued to July 21, 2021, in order to allow the parties to discuss a possible settlement of the complaint.
23. The hearing continuance was conducted via Microsoft Teams by Hearings Examiner Edward Sandoval on July 21, 2021. David Alexander, attorney with The Law Office of David W. Alexander, PLLC, represented Allen Small, Complainant, at the hearing. Mr. Small was present to offer testimony. Hyundai Motor America, Inc., Respondent, and Hyundai Lease Title Trust, Intervenor, were represented by Susan Lucas, contract representative. The hearing record closed on July 21, 2021.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
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. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 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. Complainant bears the burden of proof in this matter.
6. Complainant's vehicle has an existing defect or condition (a parasitic draw on the vehicle's battery) that substantially impairs Complainant's use or market value of the vehicle. Tex. Occ. Code § 2301.604(a).

7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief and repurchase of the 2018 Genesis G90 Ultimate under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$68,483.81**. The refund shall be paid as follows: **\$35,310.22** (this total includes the \$35.00 Lemon Law filing fee) to Complainant (Lessee) and **\$33,173.59** to Intervenor (Lessor) as their interests require. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section.

5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent, Ford Motor Company, shall repair the warrantable defect (the parasitic draw on the vehicle's battery) in the reacquired vehicle identified in this Decision.

**SIGNED July 22, 2021.**



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**EDWARD SANDOVAL**  
**CHIEF HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARING**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**