

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0009518 CAF**

SUNLIGHT ENTERPRISES CO., INC.,	§ § § § § § § § §	BEFORE THE OFFICE
Complainant		
v.		OF
GENERAL MOTORS LLC, Respondent		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Sunlight Enterprises Co., Inc. (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in the company owned 2020 Yukon Denali. Complainant asserts that the vehicle has a defect which has caused the vehicle’s transmission to get stuck in gear and the vehicle to fail to start. General Motors LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired, does not have an existing warrantable defect, and Complainant is not eligible for repurchase or replacement 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 on July 23, 2021, via Microsoft Teams before Hearings Examiner Edward Sandoval. Complainant, Sunlight Enterprises Co., Inc., was represented by Adrian Porras, Project Manager. Also testifying for Complainant were Sandra Porras, President; Samuel Casares, mechanic; and Tito Porras, Vice-President. Respondent, General Motors LLC, was represented by Clifton Green, Business Resource Manager. Michael Pritulsky and Clint Mielke, field service engineers, also appeared and testified for Respondent. The hearing record closed on July 23, 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.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to these conditions, a rebuttable presumption exists 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.⁶

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.⁷

“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.⁸

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a) (3) provides a third method for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. This section requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁸ Tex. Occ. Code § 2301.601(4).

B. Complainant's Evidence and Arguments

1. Adrian Porras' Testimony

Complainant purchased a new 2020 Ford Yukon Denali from Crawford Buick–GMC (Crawford) in El Paso, Texas on February 28, 2020, with mileage of 12 at the time of delivery.⁹ Respondent issued a new vehicle limited warranty which provides bumper-to-bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first. Respondent also provided a powertrain warranty for the vehicle which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles. The vehicle's mileage on the date of hearing was 9,293. At this time, the vehicle's warranties are still in effect.

Adrian Porras, project manager, testified for Complainant. Mr. Porras stated that he feels that the subject vehicle is not operating as it should. He stated that the vehicle's transmission intermittently gets stuck (jammed) in gear and that the vehicle sometimes will not start. Mr. Porras stated that his mother, Sandra Porras, the company president, is the primary driver of the vehicle. Mr. Porras has only driven the vehicle a few times.

Mr. Porras testified that he first became aware of a problem with the vehicle in April of 2020. Ms. Porras called him from a store and advised him that the vehicle had slid backward and would not start. Mr. Porras went to the location to help out, but the engine would not turn on. Mr. Porras stated that he personally did not attempt to start the vehicle at the time. After about 30 minutes the vehicle started, and Ms. Porras was able to drive the vehicle home without incident.

Mr. Porras stated that another incident occurred on March 19, 2021. On that date, Ms. Porras attempted to drive the vehicle to get lunch. However, the vehicle would not start, and the transmission was not responsive. During the incident, the vehicle's check engine light (CEL) illuminated. In addition, a warning message appeared on the vehicle's instrument cluster advising the driver to service the adaptive cruise control.¹⁰ Ms. Porras had Samuel Casares, the company mechanic, look at the vehicle to see if he could get it to start. Mr. Casares informed Ms. Porras that he believed that there was an issue with the vehicle's transmission and that she should take the vehicle to a dealer for repair.

⁹ Complainant Ex. 2, Purchase Worksheet dated February 28, 2020.

¹⁰ Complainant Ex. 3, Picture of Instrument Panel Cluster dated March 19, 2021.

On March 22, 2021, Ms. Porras and her husband, Tito Porras, sent a letter to Respondent advising them of their dissatisfaction with the vehicle.¹¹ Complainant also filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on April 12, 2021.¹²

Mr. Porras testified that Complainant was not contacted by Respondent after filing the Lemon Law complaint. However, under cross-examination, Mr. Porras stated that he was asked by Respondent's representative in April of 2021 to allow Respondent's field service engineer (FSE) to inspect the vehicle. Mr. Porras initially refused to allow Respondent to inspect the vehicle, but later changed his mind and allowed the inspection to take place at a different dealership.

Mr. Porras testified that the vehicle seemed to be driving correctly as of the date of hearing. No problems have occurred since the last repair performed in May of 2021. However, he feels that the issue may occur again. He also stated that Ms. Porras has not been able to use the vehicle as she has wished and has not taken it on any long trips due to her concerns with the issue possibly occurring again.

2. Samuel Casares' Testimony

Samuel Casares, employee and mechanic for Complainant, testified in the hearing. Mr. Casares has worked in the automotive industry for approximately 30 years. He received schooling on how to repair engine fuel injectors. Most of his automotive training has been hands on. He worked as a service technician for a dealership in Tucson, Arizona for approximately two (2) years prior to being employed by Complainant.

Mr. Casares testified that he was at work on March 19, 2021, when he received a request from Ms. Porras to look at the subject vehicle. She had attempted to drive the vehicle and it would not shift out of gear. Mr. Casares inspected the vehicle and indicated that he thought that there was an issue with the vehicle's transmission. He informed Ms. Porras that he did not want to work on the vehicle because he was afraid of voiding the manufacturer's warranty. Mr. Casares stated that he attempted to put the vehicle's transmission in gear, but it felt like the transmission was in neutral. The steering wheel was locked. When he attempted to shift the transmission to reverse, the transmission wouldn't engage, and the vehicle just slid backwards. The vehicle was on, but there was no power to the transmission.

¹¹ Complainant Ex. 4, Letter to GMC Customer Assistance Center dated March 22, 2021.

¹² Complainant Ex. 1, Lemon Law Complaint dated April 12, 2021.

3. Sandra Porrás' Testimony

Sandra Porrás, Complainant's president, testified in the hearing. Ms. Porrás is the primary driver of the vehicle. She stated that she did not test drive the vehicle before purchasing it. The vehicle was special ordered, and she picked it up from the dealer without driving it beforehand.

Ms. Porrás stated that approximately two (2) to three (3) weeks after purchasing the vehicle, she and her husband, Tito Porrás, drove the vehicle to Ruidoso, New Mexico. On the trip to Ruidoso there was an incident where the vehicle started trembling and shaking at approximately 80 mph. In addition, they heard a loud roaring noise from the vehicle. Mr. Porrás, who was driving, slowed down and the ride smoothed out. They did not have a problem with the vehicle on the return trip to El Paso. Ms. Porrás did not contact the dealer after the incident because she felt that the vehicle might have just needed to be broken in.

Ms. Porrás testified that another incident occurred in April of 2020 when the vehicle would not start. She stated that she attempted to shift the transmission into drive to leave a store and the vehicle would not shift into gear. It just rolled backwards. After a period of time, the vehicle eventually started and she was able to drive home. Ms. Porrás had the vehicle picked up by the dealer for repair for the issues she had experienced with the vehicle. It was taken to Casa Buick–GMC (Casa, formerly Crawford) for repair on May 15, 2020. Casa's service technician indicated that the issues raised by Complainant were that the CEL was illuminated, there was a rattling noise from the vehicle, and the vehicle would not move forward or reverse.¹³ Casa's service technician discovered two (2) diagnostic trouble codes (DTCs) on the vehicle's computers which indicated that there was a loss of communication with the vehicle's engine control module (ECM).¹⁴ In addition, the technician found an intermittent loss of voltage to the module at pin 51.¹⁵ The technician replaced the ECM's wire terminal pin 51 in order to effectuate the necessary repairs to the vehicle.¹⁶ The vehicle's mileage on this occasion was 1,786.¹⁷ The vehicle was in Casa's possession until May 28, 2020 during this repair. Complainant was provided a loaner vehicle while the vehicle was being repaired.

Ms. Porrás testified that the vehicle drove well for a period of time after the May 15, 2020 repair. However, a problem occurred one day when Ms. Porrás was driving to work. She noticed that the vehicle began to shake and make a loud noise. Ms. Porrás could not recall if any warning lights illuminated at the time. Ms. Porrás took the vehicle to Casa for repair for the issue on November 2, 2020. Casa's service technician indicated that the issues raised were that the vehicle was running

¹³ Complainant Ex. 8, Repair Order dated May 15, 2020.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

very rough, the service engine soon light, service restraint system warning light, the service traction control light, and stabilitrak light were all illuminating.¹⁸ The technician was unable to duplicate any of the issues raised by Ms. Porras during the repair visit and, as a result, no repairs were performed.¹⁹ The vehicle's mileage on this occasion was 4,715.²⁰ The vehicle was in Casa's possession for approximately a week during this repair visit. Complainant was provided a loaner vehicle while the subject vehicle was being repaired.

Ms. Porras testified that she was driving the vehicle in early 2021, when the vehicle began to shake and she heard a loud noise. Ms. Porras contacted the dealer and had them pick up the vehicle at her work location on February 16, 2021, so that it could be repaired. Casa's service technician inspected and test drove the vehicle, but was unable to recreate the problem and did not hear any abnormal noises.²¹ No repair was performed at the time. The vehicle's mileage on this occasion was 6,684.²² The vehicle was in Casa's possession for two (2) days on this occasion. Complainant was not provided with a loaner vehicle while the vehicle was being repaired.

Ms. Porras testified that she experienced another incident with the vehicle on or about March 19, 2021. She was at work and was going to drive the vehicle to pick up food for lunch. However, the vehicle would not start. The CEL and traction control warning light illuminated, as well as a warning message advising the driver to service the adaptive cruise control. The vehicle would not move, although the transmission was in gear. Ms. Porras contacted the dealer about the issue and the dealer had the vehicle towed to Casa. Ms. Porras did not indicate that any repairs were performed to the vehicle while it was at Casa on this occasion. However, she refused to pick up the vehicle from the dealer after she was told it was ready for pickup. In the meantime, on March 22, 2021, she and her husband, Tito Porras, sent a letter to Respondent advising them of their dissatisfaction with the vehicle. Mr. and Ms. Porras then filed the Lemon Law complaint on April 12, 2021. The vehicle was still at Casa when Respondent asked for an opportunity for an inspection of the vehicle. Complainant did allow Respondent to inspect the vehicle but asked that it be performed at another location.

The vehicle was towed from Casa to Shameley Buick–GMC in El Paso, Texas on May 18, 2021, in order to allow Respondent's field service engineer (FSE) to inspect the vehicle. Respondent's FSE performed a "recalibration" of the vehicle's ECM pursuant to a Technical Service Bulletin (TSB) issued by Respondent's engineers.²³ The vehicle's mileage at the time of the inspection was

¹⁸ Complainant Ex. 5, Repair Order dated November 2, 2020.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 6, Repair Order dated February 16, 2021.

²² *Id.*

²³ Complainant Ex. 7, Repair Order dated May 18, 2021.

7,306.²⁴ Ms. Porras testified that the vehicle was in the dealer's possession for two (2) days. She was not provided a loaner vehicle during the time that the vehicle was being repaired.

Ms. Porras testified that the vehicle has been operating appropriately since the repair performed on May 18, 2021. She has not experienced any incidents where the vehicle has failed to start, nor has she had any issues with the engine running rough. However, she does not feel comfortable driving the vehicle and feels that the problems may arise again.

4. Tito Porras' Testimony

Tito Porras, Complainant's vice-president, testified in the hearing. He stated that he was driving the vehicle on a trip to Ruidoso when he felt the vehicle start shaking and he heard an unusual noise. He stated that he initially thought that the issue was caused by the road they were driving on, but on the trip back to El Paso he did not experience the same issue. Mr. Porras stated that he was driving at approximately 80 to 85 mph when the issue occurred. This was later classified by Complainant as the vehicle's transmission "jamming" in gear.

C. Respondent's Evidence and Arguments

1. Clifton Green's Testimony

Clifton Green, Business Resource Manager, testified for Respondent. He stated that Respondent has provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle. In addition, Respondent provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain.

Mr. Green has never seen the vehicle. Mr. Green testified that he received the notice from Complainant of Ms. Porras' dissatisfaction with the vehicle. Mr. Green contacted Complainant's representative to request an opportunity to have Respondent's FSE inspect the vehicle prior to hearing. Initially, Mr. Adrian Porras refused the request. However, shortly afterward he changed his mind and an appointment was scheduled for Respondent's FSE to inspect the vehicle at Shameley Buick–GMC in El Paso, Texas on May 18, 2021.

2. Michael Pritulsky's Testimony

Michael Pritulsky, Field Service Engineer, testified for Respondent. Mr. Pritulsky has worked in the automotive industry since 1984. He received training at Mesa Central Vocational school. After graduation, Mr., Pritulsky worked for 24 years as a service technician at various General Motors dealers. Mr. Pritulsky was then hired by Respondent and worked for four (4) years on GM's

²⁴ *Id.*

technical service line. For the past six and a half (6 ½) years, Mr. Pritulsky has worked as an FSE for Respondent. Mr. Pritulsky is an Automotive Service Excellence (ASE) Certified World Class Technician. In addition, he is a GM Certified World Class Technician.

Mr. Pritulsky testified that he and Clint Mielke, another FSE, inspected the vehicle on May 18, 2021, at Shameley Buick–GMC in El Paso, Texas. Mr. Pritulsky stated that he performed an initial visual inspection of the vehicle when he arrived at the dealership. He did not see any damage on the vehicle nor were any after-market items installed on the vehicle. Mr. Pritulsky then performed a diagnostic check on the vehicle and did not find any current active DTCs stored on the vehicle's computers. However, he did find some historical DTCs stored on the computer. Mr. Pritulsky then cleared the codes and test drove the vehicle. He did not notice any warning lights illuminate or hear anything abnormal during the test drive. Mr. Pritulsky then contacted one of Respondent's subject matter experts about the concerns raised by Complainant. After a discussion, they agreed that the vehicle's ECM needed to be reprogrammed pursuant to Respondent's Technical Service Bulletin (TSB) 20-NA-55, Instrument Panel Cluster (IPC) Gauges Inoperative, Numerous Driver Information Center (DIC) Error Messages, No Brake or Electric Power Steering Assist, Transmission in Default Gear, No Reverse and/or Back Up Lights, No Daytime Running Lights (DRL), No Cruise or Adaptive Cruise and/or No Trailer Brake Lights (Sep. 18, 2020). After determining that the vehicle fit within the parameters of the TSB, Mr. Pritulsky reprogrammed the ECM. He then test drove the vehicle again and did not notice anything unusual on the drive.

Mr. Pritulsky stated that he was not able to duplicate any of Complainant's concerns with the vehicle during the inspection and feels that the update to the ECM should address the issues raised by Complainant. In addition, he stated that the transmission "jamming" at 80 mph on the highway may have been due to the transmission going into default (3rd) gear which was outlined as a possibility in the TSB. Mr. Pritulsky feels that the vehicle is currently operating as designed.

3. Clint Mielke's Testimony

Clint Mielke, Field Service Engineer, testified for Respondent. Mr. Mielke has worked in the automotive industry since 1985. He received automotive training from a high school vocational program. He worked for several GM dealers as a service technician and shop foreman after obtaining his vocational degree. Mr. Mielke was hired by Respondent as an FSE approximately three (3) months prior to the hearing. Mr. Mielke is a GM Certified World Class Technician.

Mr. Mielke verified Mr. Pritulsky's testimony. He observed the same items as Mr. Pritulsky and participated in the test drives of the vehicle. Mr. Mielke did not notice anything unusual on the test drives and he feels that the vehicle is operating as designed.

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.

Complainant purchased the vehicle on February 28, 2020 and presented the vehicle to Respondent's authorized dealer for repair on May 15, 2020; November 2, 2020, and February 16, 2021. Complainant indicated that the vehicle needed repair because intermittently the vehicle's transmission became stuck in gear and the vehicle failed to start. In addition, the vehicle was inspected by Respondent's FSEs on May 18, 2021, at which time they reprogrammed the vehicle's engine control module.

Occupations Code § 2301.603 provides that "a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's converter's or distributor's express warranty." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired, then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.²⁵ In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 9,293 and it remains covered under the warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

Complainant's request for repurchase or replacement relief is denied.

²⁵ Tex. Occ. Code § 2301.605.

III. FINDINGS OF FACT

1. Sunlight Enterprises Co., Inc. (Complainant) purchased a new 2020 Yukon Denali on February 28, 2020, from Crawford Buick–GMC (Crawford) in El Paso, Texas, with mileage of 12 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty providing coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty providing coverage for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 9,293.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Sandra Porras, Complainant's president, is the primary driver of the vehicle.
6. Since purchasing the vehicle, Ms. Porras has intermittently experienced the vehicle's transmission getting stuck in gear and the vehicle failing to start.
7. Prior to filing the Lemon Law complaint, Ms. Porras took the vehicle to Respondent's authorized dealer, Casa Buick–GMC (formerly Crawford) in El Paso, Texas, on the following dates in order to address the concerns regarding the transmission issue and the failure to start issue:
 - a. May 15, 2020, at 1,786 miles;
 - b. November 2, 2020, at 4,715 miles; and
 - c. February 16, 2021, at 6,684 miles.
8. On May 15, 2020, Casa's service technician found diagnostic trouble codes (DTCs) stored on the vehicle's computers indicating that there had been a loss of communication with the vehicle's engine control module (ECM).
9. During the repair visit described in Findings of Fact #8, the service technician replaced the ECM's wire terminal pin 51 as it was suffering from a loss of voltage in order to address Ms. Porras' concerns with the vehicle.
10. On November 2, 2020, Casa's service technician was unable to duplicate the engine running rough, or the warning lights illuminating (service engine soon warning light,

service restraint system warning light, service traction control warning light and stabilitrak warning light). No repairs were performed at the time.

11. On February 16, 2021, Casa's service technician was unable to verify hearing an abnormal noise in the vehicle when driving it.
12. On March 19, 2021, Ms. Porras experienced an issue where the vehicle failed to start, and the transmission refused to engage in gear. She had the vehicle towed to Casa where it stayed for several weeks.
13. On March 22, 2021, Complainant's president and vice-president sent a letter to Respondent advising them that they were dissatisfied with the vehicle.
14. On April 12, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. On May 19, 2021, the vehicle was inspected by Respondent's field service engineers (FSEs), Michael Pritulsky and Clint Mielke, at Shameley Buick-GMC in El Paso, Texas. The vehicle's mileage at the time was 7,306.
16. During the inspection described in Findings of Fact #15, Respondent's FSEs were unable to duplicate the issues complained of by Ms. Porras; however, they did discover some diagnostic trouble codes (DTCs) stored in the vehicle's history.
17. The FSEs determined that some of the issues experienced by Ms. Porras when driving the vehicle fit within the symptoms described in Technical Service Bulletin #20-NA-055 which had been prepared by Respondent's engineers who determined that the proper fix was to reprogram the vehicle's ECM with the latest software update. The FSE's performed the ECM update at that time.
18. Ms. Porras has not experienced an issue with the vehicle since prior to the last repair performed on May 18, 2021.
19. On April 30, 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.

20. The hearing in this case convened on July 23, 2021, via Microsoft Teams before Hearings Examiner Edward Sandoval. Complainant, Sunlight Enterprises Co., Inc., was represented by Adrian Porras, Project Manager. Also testifying for Complainant were Sandra Porras, President; Samuel Casares, mechanic; and Tito Porras, Vice-President. Respondent, General Motors LLC, was represented by Clifton Green, Business Resource Manager. Michael Pritulsky and Clint Mielke, field service engineers, also appeared and testified for Respondent. The hearing record closed on July 23, 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 failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

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 §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED August 16, 2021



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