

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0018 CAF**

**JASON GARRETT,
Complainant**

v.

**CHRYSLER GROUP, LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jason Garrett seeks replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for an alleged defect that activates the “Check Engine Light” of his 2013 Dodge Ram 3500. Chrysler Group, LLC (Chrysler) argues that the vehicle was successfully repaired, and no current warrantable defect exists. The hearings examiner finds there is insufficient evidence to demonstrate the existence of a defective condition that creates a serious safety hazard, or substantially impairs the use or market value of the vehicle. As a result, the request for replacement relief must be denied.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested. These issues are discussed only in the Findings of Fact and Conclusions of Law.

The evidentiary hearing convened on December 8, 2014 in Houston, Texas, with Hearings Examiner Anne K. Perez presiding. Mr. Garrett represented himself. Both he and his spouse Shi Garrett offered testimony at the hearing. Early Resolution Case Manager Jan Kershaw appeared on behalf of Chrysler. Ms. Kershaw and Stuart Ritchey, Technical Advisor for Chrysler’s Southwest Business Center, both offered testimony at hearing.

II. DISCUSSION

A. Undisputed Facts

1. Purchase Information and Mileage

On July 12, 2013, Mr. Garrett purchased a new 2013 Dodge Ram 3500 (the vehicle, or truck) from Allen Samuels Auto Group (Allen Samuels Group) of Katy, Texas, with mileage of 28 at the time of delivery.¹ On the date of hearing, the vehicle's mileage was 46,133.

2. Warranty Coverage

Chrysler manufactured the vehicle. On July 12, 2013, Chrysler issued an express limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever comes first. Chrysler also issued a powertrain warranty covering defects in the vehicle's engine, transmission, and drive train for 60 months or 100,000 miles, whichever comes first.²

3. Lemon Law Complaint and Notice to Manufacturer

On September 15, 2014, Mr. Garrett provided written notice to Chrysler of an alleged defect that was causing the truck's "Check Engine" light to repeatedly come on.³ Mr. Garrett's petition for Lemon Law relief received by the Texas Department of Motor Vehicles (Department) on September 16, 2014, complains of the same alleged defect.⁴

B. Legal Standards

The Lemon Law provides administrative remedies for a consumer whose vehicle cannot be made to conform to an applicable express warranty. Texas Occupations Code § 2301.604(a) provides that:

- (a) A manufacturer . . . that is unable to 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 shall reimburse the

¹ Complainant Ex. 1, Buyer's Order & Invoice.

² The parties stipulated to the terms of Chrysler's express limited warranties applicable to the vehicle.

³ Complainant Ex. 9.

⁴ Complainant Ex. 8.

owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

- (1) replace the motor vehicle with a comparable motor vehicle; or
- (2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner's use of the vehicle, and any other allowances or refunds payable to the owner.

“Impairment of market value” means a substantial loss in market value caused by a nonconformity in the vehicle, and “serious safety hazard” means a life-threatening malfunction or defect that significantly impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes.⁵

C. Mr. Garrett’s Evidence

Mr. Garrett testified that he purchased the 2013 Dodge Ram diesel-engine truck new on July 12, 2013. He said that within the first 600 miles of being driven the vehicle’s “Check Engine” light came on, and it has been a recurring problem ever since. The light is never associated with another problem, mechanical or otherwise. It comes on for no apparent reason.

Shi Garrett testified that the first time the warning light appeared (at mileage of 650) she brought the truck in for service at Allen Samuels Chrysler Dodge Jeep Ram (Allen Samuels) of Katy, Texas, and it remained there between July 17 and 22, 2013. She recalled feeling irritated because the dealer repair was resetting the light.⁶

The warning light came back on in a week. The Garretts took the vehicle in for service on July 25, 2013. According to Mr. Garrett, diagnostic testing revealed a fault code related to the diesel exhaust system, or emissions system, and technicians needed to “tear the truck apart.” The couple scheduled a service appointment to have the work done.

Between July 29 and August 2, 2013, Allen Samuels’ technicians took the truck’s exhaust cycle apart from front-to-back, but they found nothing wrong. After consulting with Chrysler’s STAR Center, they told Mr. Garrett that the “Check Engine” light was coming on because of “the way the truck’s emissions

⁵ Tex. Occ. Code § 2301.601(1) and (4).

⁶ The Garretts indicated that they were always provided with alternate transportation when the vehicle underwent service.

parameters were set,” and that the vehicle needed a software update. However, no software update was performed. Mr. Garrett said, “The excuse they gave us was, because it was an emissions issue, they had to wait on some government filing before they could do the software update.” The warning light was deactivated when the Garretts took the truck home on August 2, 2013.

During the next four weeks the light periodically came on and turned off. The couple was very uncomfortable with the situation. Ms. Garrett said, “I kept calling the dealership, asking ‘Has an update come through? Has an update come through?’” The dealer’s service personnel advised the couple to continue driving the vehicle because until the software update came out, there was nothing to be done. Mr. Garrett inquired whether the engine, or the vehicle’s other operating systems could be damaged by driving while the warning light was on. An Allen Samuels’ employee responded, “No, it’s actually better than new because it’s continuously regenerating the catalyst and producing cleaner emissions.”

On August 30, 2013, the Garretts returned to the dealer to have a new fender flare installed. The “Check Engine” light was on at the time, but there was still no repair available. The warning light continued to turn on and go off until September 30, 2013, when the long-awaited software update arrived. Following the installation of the flash, the Garretts did not see the warning light for a full nine months.

On July 9, 2014, the “Check Engine” light came back on. The Garretts immediately brought the truck in for service. A day or two later, they were told that another software update had resolved the issue. The warning light did not illuminate again for almost two months. The light started to come back on in September 2014, and it was sometimes accompanied by a message (*e.g.*, “service oxygen sensor”) on the instrument cluster. The message would disappear as soon as the vehicle was restarted, but the “Check Engine” light would stay on for several days, even up to a week.

By this point the couple was extremely frustrated. The warning light was on in early-September 2014 when Ms. Garrett brought the truck in for service, but Allen Samuels’ only diesel technician was on vacation. She proceeded to drive to another dealership, Helfman Dodge Chrysler Jeep Ram (Helfman) of Houston, Texas. She watched as Helfman’s service writer entered the truck’s vehicle identification number into a computer system. He turned to her and said: “You need to file a Lemon Law complaint. There’s too much going on with this vehicle, we won’t touch it.” She left. A few days later, she followed the service

writer's advice and notified Chrysler of the truck's problems. The Garretts then followed up by filing a Lemon Law complaint with the Texas Department of Motor Vehicles.

After filing the complaint in September 2014, the Garretts sought no further repairs from dealers. They continued driving the truck, even as the "Check Engine" light came on and stayed on for days at a time. The light was off on November 13, 2014, the day that Chrysler's Technical Advisor Stuart Ritchey inspected the vehicle, but it reappeared afterward. Mr. Garrett testified that one week prior to the hearing, he was traveling outside the Houston-area and the warning light came on. He drove to the closest dealership, Chrysler Dodge Jeep of Boerne, Texas, where a service technician performed a quick diagnostic test on the vehicle. Two fault codes were present, "one to do with the mirrors, and the other because emissions were below standards." Mr. Garrett was unable to leave the truck in Boerne for service, and he left without "a print-out" of the two fault codes that were detected.

The Garretts and their child often take weekend trips in the truck, pulling their travel-trailer. Mr. Garrett is concerned about his family's safety while pulling a load. The appearance of the "Check Engine" light could be a false alarm, or it might indicate a serious problem, but he would not be able to tell. He could try selling the vehicle, but what would he tell potential buyers? "Sorry, you can't look at the truck today because the 'Check Engine' light is on?"

Allen Samuels' repair orders for the truck reflect the following information:⁷

Date In/Out (Dealer)	Mileage In/Out	Reported Concern	Diagnostic Action & Dealer's Findings
In 7-17-13 Out 7-22-13	650	Check Engine Light is On	Technician was unable to verify concern
In 7-25-13 Out 7-26-13	1,349	Check Engine Light is On; Left-rear fender is coming apart	Inspected Verified Found Code P2459 in the Engine Control Module (ECM); Contacted the STAR Center; Case #516281; Advised to perform test for P2459; Customer will reschedule for test to be performed; Replacement parts ordered for Left-rear fender
In 7-29-13 Out 8-2-13	In 1,520 Out 1,630	Check Engine Light is On	Inspected & Found P2459 in the ECM, no other diagnostic trouble codes (DTCs) found; Brought to Latest ECM Software Calibration; Case #516281, Advised by STAR Center to follow the diagnostic flow chart for P2459; Followed instructions & found: (1) no broken linkage in dual snorkel; (2) no oil entering intake system; (3) no

⁷ The repair orders were admitted as Complainant Exs. 2-7, 8, and 10, and the table below summarizes the dealer's diagnostic findings and actions.

			<p>wheel damage to turbo charger; (4) no oil on exhaust-side of turbo charger; (5) no oil revealed in intake or exhaust system hoses and lines (through pressure-testing); (6) no oil in exhaust manifold; (7) valve seal was properly installed; CCV filter, fuel system, and fuel tested to specifications; (8) fuel transfer pump flowing properly; (9) fuel pressure limiting valve tested to specifications; (10) injector return flow test returned normal results; (11) high-pressure delivery pump tested at normal volume; (12) fuel control actuator operating properly; (13) inspected DOC/DPF⁸ & found no damage.</p> <p>No abnormal conditions found; reassemble vehicle & test-drove. Informed customer that a flash update is being developed for this concern; reported findings to STAR Center</p>
In 8-30-13 ⁹	1,702	Left-rear fender flare is coming apart; Check Engine Light is On While Driving	<p>Left-rear fender flare adhesive failed causing flare to fit improperly; removed & reinstalled flare & checked for proper fit</p> <p>Check Engine Light: Waiting for flash update to come out</p>
9-30-13	4,848	Check Engine Light is On While Driving	Inspected & Found P2459 in ECM; Found TSB 18-018-13 REV.B; Performed Flash Update (reprogrammed) & inspected for proper operation; Reprogrammed radio [in accordance with] RRT 13-056
7-9-14	31,480	Check Engine Light is On	[Repair Order does not identify repair] ¹⁰ Inspected & Found Code P20EE (Catalytic Efficiency Below Threshold) in ECM; Performed software update pursuant to TSB 18-030-14
In 11-12-14 Out 11-14-14	In 43,305 Out 43,305	CEL is on; happens more in warm weather than colder weather	Inspected & found no stored or active DTCs

C. Chrysler's Evidence

Mr. Ritchey testified that in addition to reviewing the vehicle's repair history, he inspected the truck at Allen Samuels on November 13, 2014, and prepared a report with his inspection findings.¹¹ He inspected the vehicle a second time at the hearing on December 8, 2014. In his opinion, a warrantable defect does not exist in the truck.

⁸ DOC means diesel oxidation catalyst; DPF means diesel particulate filter.

⁹ The repair orders admitted as Complainant Exs. 5 and 6 reflect different service dates, but they bear the same invoice number (276960); the dealer incorrectly lists repairs that were performed only once (concerning the left-rear fender and the software update in TSB 18-018-13 REV.B) in both repair orders. The testimony of Ms. Garrett and Mr. Ritchey (who reviewed Chrysler's warranty records) established that: (1) repairs to the vehicle's left fender were performed on August 30, 2013; and (2) the software update was performed on September 30, 2013. The table contains the correct information.

¹⁰ Mr. Ritchey testified that technicians found a failure code P20EE in the truck's electronic control module (ECM) on July 9, 2014. The code is for "Catalytic Efficiency Below Threshold," and it means that the exhaust stream tested outside of allowable emissions parameters. According to Mr. Ritchey, the issue was corrected by flashing (performing a software update) the ECM, consistent with TSB 18-030-14.

¹¹ Respondent Ex. 1.

Mr. Ritchey explained that the Garretts' truck is electronically controlled by a set of computer systems, such as the Engine Control Module (controlling the engine) and the Body Control Module (controlling accessories like mirrors). Similar to a home computer, the vehicle's computer systems periodically require software updates to function properly. Because updates, or "flashes" are critical for proper operation of the vehicle, dealer technicians performing any type of service (even an oil change) are instructed to search Chrysler's database for recently-issued software updates, or service bulletins applicable to the customer's vehicle.¹²

Mr. Ritchey said the issue with the vehicle's "Check Engine" light was first reported to a dealer on July 17, 2013, when mileage was at 650; because a repair solution was not yet available, technicians reset the light. When the warning light illuminated on July 25, 2013, at mileage of 1,349, technicians "opened a case"¹³ with Chrysler. The Garretts were asked to schedule a full diagnostic inspection of the truck's diesel fuel and emissions systems, which was completed between the dates of July 29 and August 2, 2013. Although diagnostic testing performed on both July 25 and 29, 2013, uncovered ECM fault code P2459 (for Particulate Regeneration Too Frequent), Mr. Ritchey indicated that the code was not cause for great concern because the results of extensive pressure-testing performed on the truck's diesel fuel and emissions systems had ruled out a mechanical failure, *i.e.*, technicians knew the code was for a software issue, and that the vehicle was safe to drive while waiting on the flash from Chrysler. Accordingly, technicians told Mr. Garrett that he could continue driving the truck in August and September 2013, despite the "Check Engine" light's intermittent appearance. On September 30, 2013, at mileage of 4,848, the software update was finally available and the vehicle's ECM was flashed consistent with TSB 18-018-13 REV.B.

Mr. Ritchey noted that following the first software update, the Garretts drove the truck for nine months, and more than 25,000 miles, and throughout that time period the vehicle was not serviced for the warning light. On July 9, 2014, at mileage of 31,480, the "Check Engine" light came back on, but diagnostic testing revealed a different ECM fault code, P20EE (for Catalytic Efficiency Below Threshold). As previously noted, Code P20EE indicates that the vehicle's exhaust stream tested outside allowable emissions parameters. On this occasion, installation of an ECM software update (per TSB 18-030-14) corrected the concern.

¹² Ms. Kershaw's testimony acknowledged that this practice does not always happen.

¹³ Case No. 516281.

Mr. Ritchey stated that he could not say why the vehicle's "Check Engine" light came back on two months later (in early September 2014), or why the light intermittently turned on and off throughout the months of October and November of 2014, because the vehicle has not been serviced by a Chrysler dealer since the ECM flash was performed on July 9, 2014.

Mr. Ritchey testified that when he inspected the Garretts' truck on November 13, 2014, the warning light was off. His diagnostic testing performed that day turned up two ECM fault codes, P2509 (for Battery Cables Disconnected) and P2560 (for Low Coolant). He said that if a battery cable came loose sometime after the July 2014 service visit, the issue could cause the "Check Engine" light to illuminate intermittently. During his November 13, 2014 inspection, Mr. Ritchey erased the two referenced ECM fault codes, as well as several others (related to the Body Module and Passenger Door Module). None of these codes returned,¹⁴ *i.e.*, the condition that caused the code was no longer present.

On December 8, 2014 (the hearing date), the vehicle's "Check Engine" light was on. Mr. Ritchey identified three "stored" fault codes using a hand-held diagnostic scanning tool. He said that ECM Code P20EE (Catalytic Efficiency Below Threshold) was not present during the November 13, 2014 inspection, but it was "stored" on the day of hearing.¹⁵ He observed that this same code was found once before, on July 9, 2014, and it was successfully eradicated by the flash update in TSB 18-030-14. He indicated that another software update (TSB 18-030-14 REV.A) issued by Chrysler on November 14, 2014, was applicable to the Garretts' vehicle, and that it would correct Code P20EE found on December 8, 2014.¹⁶

Both Mr. Ritchey and Ms. Kershaw acknowledged that the need to install repetitive software updates is burdensome for the Garretts, particularly because of the ongoing issues affecting the vehicle's "Check Engine" light. According to Mr. Ritchey, however, the presence of this warning light is probably less-than critical. He explained that diesel-powered vehicles are equipped with a host of sensors to ensure optimal engine performance. If existing conditions (*e.g.*, fuel level, fuel content) are not within established parameters, the vehicle will shut down automatically to protect the engine from damage.

¹⁴ Mr. Ritchey said he advised the dealer to perform Recall P26 (a flash) on the truck's ABS (Anti-Lock Brakes) Module.

¹⁵ The two remaining stored codes were for Mirror Circuit and Sensor Performance. An "active" code (for Mirror Fault) was also detected during the November 2014 inspection.

¹⁶ Respondent Ex. 2.

D. Analysis

In order to prevail in his request for repurchase relief, Mr. Garrett must show by a preponderance of the evidence that Chrysler has not conformed the vehicle to an applicable express warranty because Chrysler cannot repair a defect in the vehicle. In addition, he must show that the nonconformity creates a serious safety hazard, or substantially impairs the use or market value of the vehicle. Neither statutory element was established by the required standard of proof.

There is no question that the truck's reappearing warning light has caused the Garretts substantial worry and inconvenience. They are conscientious people. They take good care of the vehicle, and like most drivers they were taught that the "Check Engine" light should never be ignored. That the Garretts have had to continually live with the warning light on in a brand-new truck is very unfair.

That said, the evidence does not establish that the vehicle has a defect that is repetitively causing the warning light to come on. Rather, the evidence shows that the truck is a complicated piece of electronic machinery, with multiple programming and software issues. The TSBs applicable to vehicle indicate that Chrysler has been called upon to address one glitch after another. While the lack of adequate software may be the source of "Check Engine" light coming on for unexplained reasons, this circumstance does not rise to the level of a warrantable defect. According to Mr. Ritchey, a software flash made available on November 14, 2014, would correct the Garretts' current concern. Under the circumstances, the request for replacement relief must be denied.

II. FINDINGS OF FACT

1. On July 12, 2013, Jason Garrett purchased a new 2012 Dodge Ram 3500 (the vehicle, or truck) from Allen Samuels Auto Group (Allen Samuels) of Katy, Texas, with mileage of 28 at the time of delivery.
2. The manufacturer of the vehicle, Chrysler Group, LLC (Chrysler) issued a basic limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever comes first. Chrysler also issued a powertrain warranty for the vehicle covering defects in the vehicle's engine, transmission, and drive train for 60 months or 100,000 miles, whichever comes first.

3. The vehicle's mileage on the date of hearing was 46,133.
4. At the time of hearing, Chrysler's basic express limited warranty covering the vehicle was expired.
5. At the time of hearing, Chrysler's express limited powertrain warranty covering the vehicle was in effect.
6. The vehicle was serviced because of its "Check Engine Light" by Allen Samuels Chrysler Dodge Jeep Ram (Allen Samuels) of Katy, Texas, on the following dates:
 - a. July 17, 2013, at 650 miles;
 - b. July 25, 2013, at 1,349 miles;
 - c. July 29, 2013, at 1,520 miles;
 - d. August 30, 2013, at 1,702 miles;
 - e. September 30, 2013, at 4,848 miles;
 - f. July 9, 2014, at 31,480 miles; and
 - g. November 12, 2014, at 43,305 miles.
7. Allen Samuels is a franchised dealer of Chrysler.
8. Although diagnostic testing of the vehicle performed during the July 25 and July 29, 2013 service visits uncovered Fault Code P2459 (for Particulate Regeneration Too Frequent) in the Engine Control Module (ECM), extensive pressure-testing of the vehicle's diesel fuel and emissions systems determined ensured that the code was not the result of a mechanical failure, *i.e.*, the code was the result of a software-related issue and the vehicle could be safely driven until a software update became available from Chrysler.
9. During the September 30, 2013 service visit, the vehicle's ECM was flashed with a software update consistent with TSB 18-018-13 REV.B. Following this repair, the vehicle was driven more than 25,000 miles over a nine-month period, during which there were no reported problems with the "Check Engine" light.
10. On July 9, 2014, the vehicle's "Check Engine" light came back on. Diagnostic testing revealed Fault Code P20EE for (Catalytic Efficiency Below Threshold) in the ECM. The issue was corrected by installing a software update, pursuant to TSB 18-030-14.
11. The vehicle was not serviced by an authorized repair facility between July 9, 2014, and the hearing date of December 8, 2014.

12. The vehicle's "Check Engine" light was on when the hearing convened on December 8, 2014. Diagnostic testing revealed the presence of Fault Code P20EE (for Catalytic Efficiency Below Threshold), the same code that was found and eradicated by a flash update on July 9, 2014.
13. On November 14, 2014, Chrysler issued TSB 18-030-14 REV.A, improving upon the software update that was applied to the vehicle during the July 2014 service visit.
14. The update referenced in Finding of Fact No. 12 is applicable to the Garretts' vehicle, and it should correct the vehicle's issue described in Finding of Fact No. 11.
15. No current warrantable defect exists in the vehicle.
16. On September 15, 2014, Mr. Garrett provided written notice to Chrysler of an alleged defect that was causing the "Check Engine Light" to repeatedly come on in his truck.
17. On September 16, 2014, Mr. Garrett filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
18. On November 3, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Mr. Garrett and Chrysler, 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.
19. The evidentiary hearing convened and closed on December 8, 2014 in Houston, Texas, with Hearings Examiner Anne K. Perez presiding. Mr. Garrett represented himself. Early Resolution Case Manager Jan Kershaw represented Chrysler.

III. CONCLUSIONS OF LAW

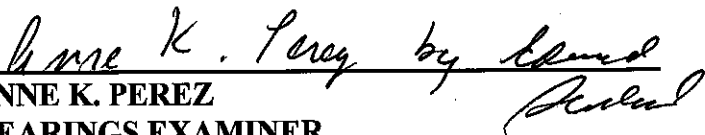
1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision 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 failed to prove by a preponderance of the evidence that the vehicle has a verifiable 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.
6. 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 the petition for replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

SIGNED February 6, 2015.


ANNE K. PEREZ
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES