

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0103 CAF**

SEBASTIAN M. GONZALES,
Complainant

v.

FCA USA LLC,
Respondent

§
§
§
§
§
§

BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Sebastian M. Gonzales (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2013 Dodge Ram 3500 pickup. Complainant asserts that the vehicle is defective because the steering wheel vibrates when the vehicle is driven over 60 miles per hour. Complainant argues that the issue is a safety hazard. FCA USA LLC (Respondent) argues that sufficient repair attempts were not undertaken pursuant to the manufacturer's warranty, that the vehicle does not have any defects, and that no relief is warranted. The hearings examiner concludes that Complainant did not undertake a reasonable number of repair attempts for the vehicle. Complainant is thus not eligible for 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 initial hearing in this case convened on April 22, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Sebastian M. Gonzales, was present and represented by attorney Lara Autrey. Claudia R. Romero, Complainant's wife, appeared in person to offer testimony for Complainant. George Mendez, David Laredo, and Jose Perez Castellanos, employees of Complainant, appeared in person to offer testimony on behalf of Complainant. Respondent, FCA USA, was represented by Dave Polsinelli, associate at Beatty Bangle Strama PC. Stephen Heun, Area Parts and Service District Manager, appeared to offer testimony on behalf of Respondent. Gerardo Barchielli provided Spanish interpretive services.

The hearing reconvened and the record closed on June 4, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant was present and represented by attorney Lara Autrey. Claudia R. Romero appeared in person to offer testimony for Complainant. Respondent, FCA USA, was represented by attorney Dave Polsinelli. Stephen Heun, Area Parts and Service District Manager, appeared to offer testimony on behalf of Respondent. James Clark provided Spanish interpretive services.

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 owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these conditions, Section 2301.605 of the Occupation Code specifies that there are three tests which can establish a rebuttable presumption that a reasonable number of attempts have been undertaken by a Respondent to conform a motor vehicle to an applicable express warranty. The first test provides that if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt, then Complainant has established that Respondent has been provided with a reasonable number of attempts to repair the vehicle.⁵ The second test applies to a nonconformity that creates a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupation Code. The third test provides that Complainant can establish a rebuttable presumption that a reasonable number of attempts to conform a motor vehicle to an applicable express warranty if a nonconformity continues to exist which substantially impairs the vehicle's use or market value and (1) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner and (2) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.⁶ However, the Occupations Code also provides that the 30 day period described by this section does not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.⁷

B. Complainant's Evidence and Arguments

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

⁶ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

⁷ Tex. Occ. Code § 2301.605(c).

Complainant purchased a new 2013 Dodge Ram 3500 pickup from Clear Lake Chrysler Jeep Dodge (Clear Lake) in Webster, Texas, on November 16, 2013.⁸ The vehicle's mileage at the time of delivery was 255. Respondent provided a basic limited warranty for the first three (3) years or 36,000 miles on the odometer, whichever comes first.⁹ In addition, Respondent provided a five (5) year or 100,000 miles powertrain warranty for the vehicle.¹⁰

Complainant's wife (Claudia Romero) had possession of the vehicle for the first two months after it was purchased, because Complainant was working in Palestine, Texas. When Complainant returned home from Palestine, he noticed a vibration in the steering wheel when he drove the vehicle over 60 miles per hour. The steering wheel, center console, and passenger seat would all vibrate during these episodes. Complainant took the vehicle to Clear Lake for repair in January of 2014, but was told to return the vehicle when it was time to perform the regular scheduled maintenance on it. Complainant returned on February 14, 2014, at which time normal maintenance was performed on the vehicle. Complainant testified that he also asked the dealer to investigate the vibration issue. However, the vibration issue was not recorded on the repair order. The vehicle's mileage on this occasion was 7,595.¹¹

Complainant testified that sometime in February of 2014, the vehicle's check engine light (CEL) illuminated. He took the vehicle to Clear Lake so the issue could be addressed and it could be determined what was causing the CEL to illuminate. Complainant testified that the dealer's service technicians just erased the codes causing the light to come on. No other work was done, nor was Complainant provided with a repair order.

Complainant's next repair visit to Clear Lake was on April 7, 2014. The dealer changed the oil in the vehicle and rotated the tires. A 16 point vehicle inspection was performed, as well. Complainant testified that he also asked the dealer to investigate the vibration issue. However, the vibration issue was not recorded on the repair order. No repairs were done to address the vibration issue. The vehicle's mileage when Complainant took it in for repair was 12,223.¹²

Complainant testified that he still felt the vehicle vibrating after the repair visit on April 7, 2014, so Complainant returned the vehicle to Clear Lake on April 21, 2014. Complainant had the dealer's service technician ride with him to illustrate the issues he was experiencing with the vehicle. The technician felt the vibration during the test drive and attempted to determine what was causing the vibration issue. The repair order indicates that the dealer believed that mud on

⁸ Complainant Ex. 1, Motor Vehicle Installment Sales Contract.

⁹ Respondent Ex. 2, 2013 Ram Truck 1500/2500/3500 Diesel Warranty Information, p. 1.

¹⁰ *Id.*

¹¹ Complainant Ex. 2, Repair Order dated February 14, 2014.

¹² Complainant Ex. 3, Repair Order dated April 7, 2014.

the rear wheels was the source of the problem. So, the vehicle's tires were cleaned. The vehicle's mileage was 14,269 on this occasion.¹³

Complainant testified that after the tires were cleaned, he would still feel the vibration when he drove the vehicle. Complainant took the vehicle to Clear Lake for repair on June 18, 2014. Normal maintenance was performed on the vehicle, but the repair order does not mention the vibration issue. Complainant testified that he raised the vibration issue with the dealer's service advisor. However, no repairs were done to address Complainant's concerns. The vehicle's mileage on this occasion was 18,423.¹⁴

Complainant took the vehicle to Clear Lake on August 19, 2014, to repair a punctured tire and to address the issue of the vehicle vibrating. The repair order notes that only normal maintenance was performed. Nothing was done to address the vibration issue. The vehicle's mileage during this repair visit was 23,616.¹⁵ It was at this visit that, according to Complainant's testimony, the dealer's representative told Complainant, "Take your problem elsewhere."

Sometime in August of 2014, the vehicle's mileage surpassed 24,000.

On December 19, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department). Complainant indicated on the complaint that the vehicle had a problem with the alignment causing the vehicle to vibrate. Complainant's attorney, Lara Autrey, mailed a notice letter to Respondent on December 15, 2014, advising them of Complainant's dissatisfaction with the vehicle.¹⁶ A copy of the letter was also provided to Clear Lake. On January 5, 2015, Clear Lake's attorney sent a letter to Ms. Autrey to inform her that Complainant's vehicle could be inspected by the dealer's service technician in order to determine what repairs, if any, needed to be performed.¹⁷ However, Complainant could not get in contact with the dealer's representative specified in the letter.¹⁸ Complainant eventually took the vehicle to the dealer for an unscheduled inspection, but testified that Respondent's representative failed to show up for the inspection.

Complainant testified that he was unhappy with the vehicle because he had purchased it for his transport business. Since purchasing the vehicle, Complainant has not been able to use it for his intended purposes.

¹³ Complainant Ex. 4, Repair Order dated April 21, 2014.

¹⁴ Complainant Ex. 5, Repair Order dated June 18, 2014.

¹⁵ Complainant Ex. 6, Repair Order dated August 19, 2014.

¹⁶ Complainant Ex. 7, Letter dated December 15, 2014.

¹⁷ Complainant Ex. 8, Letter dated January 5, 2015.

¹⁸ Complainant Ex. 9, E-mail dated February 18, 2015.

During cross examination, Complainant testified that he had purchased the vehicle because he liked its style and because it had been recommended to him by other individuals. He was told that the vehicle was more stable and had more power than other similar vehicles. Complainant testified that he did test drive the vehicle before purchasing it, but did not drive it on the freeway. The vehicle drives fine at low speeds. However, whenever he drives it at speeds in excess of 60 MPH, Complainant feels the vehicle vibrating. In addition, Complainant testified that the CEL is currently illuminated.

Complainant further stated that when he bought the vehicle he purchased an additional warranty for the vehicle's tires, plus roadside assistance. He stated that he purchased a new vehicle so that he could rely on it. He feels that the vibration issues are being caused by problems with the vehicle's suspension. He stated that the tires wear unevenly. He feels that Clear Lakes' technicians did not perform all of the required maintenance tasks whenever he took the vehicle in for scheduled maintenance. Complainant testified that he does not believe that the technicians performed a tire rotation on February 14, 2014 or on April 7, 2014, when he took the vehicle in for the scheduled maintenance visits.

Complainant also testified that he mentioned the vehicle's vibration to the Clear Lake representatives during the June 18, 2014 and August 19, 2014, repair visits, but the concern was not listed on the repair orders given to him.

Complainant stated that sometime in July or August of 2014, while driving the vehicle, a tire blew out and the vehicle veered into another lane where it was struck by another vehicle. Complainant feels that the vibration issue has affected his driving of the vehicle. However, Complainant still has driven an average of 2,000 to 2,500 miles in the vehicle per month.

George Mendez, chauffeur and one of Complainant's drivers, testified that he was hired by Complainant approximately one month prior to June 4, 2015. He has driven the vehicle at issue. Mr. Mendez testified that he was told by Complainant not to drive the vehicle over 60 MPH because it would shake violently. When Mr. Mendez drove the vehicle, he noticed that the vehicle would veer to the left if driven over 55 miles per hour. However, if it had a trailer attached, it would drift to the right. The vehicle also overheated at one point, despite being full of water and coolant. Mr. Mendez also testified that the check engine light has been on since his first day of employment. Mr. Mendez has driven the vehicle about five times and is not scared or worried when driving the vehicle.

Complainant's wife, Claudia R. Romero, testified that she was present when Complainant purchased the vehicle. She drove the vehicle while Complainant was in Palestine working. She first began to experience a problem with the vehicle about a month after purchasing it. Ms. Romero experienced vibrations in the steering wheel as she was driving toward Texas City,

Texas. She was driving between sixty and sixty-five miles per hour at the time. Ms. Romero called Complainant to advise him of the vehicle's vibration. He told her that it was not normal for a vehicle to vibrate like that and for her to be cautious. When Complainant returned to his home from Palestine, he took the vehicle to Clear Lake in February of 2014 in order to address the vibration issue. Ms. Romero waited all day for the vehicle to be repaired. However, the truck was kept by the dealer for three days. When Ms. Romero went to Clear Lake to pick up the vehicle three days later, she was informed that there was no problem with the vehicle. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

Ms. Romero testified that she and Complainant continued to have trouble with the vehicle. She feels that the dealer's service technicians were not doing all of the work requested when they took the vehicle for scheduled maintenance repairs. She feels that the technicians did not perform the necessary tire rotations. She does not know if an alignment was ever performed on the vehicle.

Sometime in April of 2014, Ms. Romero called one of Clear Lakes' managers and informed him of her concerns with the vehicle. She was advised to take the vehicle to Clear Lake for repair. When Ms. Romero arrived, she was told to leave the vehicle with the dealer. Ms. Romero later received a call from a dealer representative advising her that the only issue with the vehicle was mud and dirt in the tires. Complainant was not provided with a loaner vehicle during this repair visit.

Complainant also testified that the vehicle's CEL is currently illuminated. She's afraid to drive in the vehicle with her children. The vehicle still vibrates.

During cross examination, Ms. Romero testified that she and Complainant are operating a car transport business. She feels that a new vehicle should not have any problems such as this vehicle has exhibited.

C. Respondent's Evidence and Arguments

Stephen Heun, Area Parts and Service District Manager, appeared to offer testimony on behalf of Respondent. Mr. Heun possesses a bachelor's degree in economics from Tulane and is a National Institute for Automotive Service Excellence (ASE) master certified technician in all eight automotive categories. Mr. Heun has worked for Chrysler for over thirty (30) years. Among his current job duties, Mr. Heun is tasked with meeting with customers and helping to resolve their complaints regarding their vehicles.

Mr. Heun was present for two different inspections of Complainant's vehicle. The first inspection occurred in February of 2015, at Clear Lake. The second occurred on June 1, 2015, at

AutoNation Ford in Houston, Texas. On both occasions, Mr. Heun observed and recorded undercarriage damage to the vehicle's lower control arms and tires.

During the February inspection, Mr. Heun photographed a dent in one of the vehicle's tires.¹⁹ At the hearing, Mr. Heun explained that the tire may have been damaged by striking a pothole or curb. The right²⁰ and left²¹ lower controls arms also showed signs of impact damage. Mr. Heun testified that he found "chunks of concrete" lodged in the control arms. These signs of impact damage led Mr. Heun to conclude that the vehicle likely struck something substantial. He feels that this could be the source of the vibration issue, especially if the vehicle's alignment was damaged by the impact.

During the June of 2015 inspection, Mr. Heun noticed the right front shock absorber was not damaged, meaning that the vibration issue was likely caused by the vehicle's wheel alignment.²² Mr. Heun testified that another photograph that he took shows abrasions on the vehicle's left lower control arm that are indicative of impact with a hard object, such as a curb.²³ The left lower control arm cupping area also appears to have surface rust, which means that the anti-corrosion material normally found on the part has been scraped off; the cupping area also exhibits scratches.²⁴

A visual inspection of the vehicle was also performed at the hearing on April 22, 2015. The mileage at the time of inspection was 44,785. Mr. Heun pointed out that the rear outbound tires looked overinflated, because they were worn in the center. The spare tire had separation that was indicative of impact damage, as well. There was also a broken lower ball joint. Mr. Heun also classified this as impact damage.

Mr. Heun testified that the type of impact damage he observed does not occur in a factory. It occurs when a driver runs over a curb or strikes a pothole. The alignment is likely off because the arms were struck during an impact with a substantial object. The alignment issue likely caused tire wear, which could cause vibrations at high speeds. The warranty on the vehicle does not cover damage caused by driving over curbs and other similar misuse.²⁵

Mr. Heun testified that only one repair attempt to correct the vibration issue was undertaken by Complainant. During the repair visit on April 21, 2014, the dealer addressed the vibration issue, but did not perform any warrantable repairs. The dealer merely washed mud off of the vehicle's tires. Moreover, the only warranty claim regarding the vehicle that was reported to Respondent

¹⁹ Respondent Ex. 4, Photograph of Tire Impact Damage #1.

²⁰ Respondent Ex. 5, Photograph of Right Lower Control Arm #1.

²¹ Respondent Ex. 6, Photograph of Left Lower Control Arm #1.

²² Respondent Ex. 10, Photograph of Right Front Shock Absorber.

²³ Respondent Ex. 12, Photograph of Left Lower Control Arm #2.

²⁴ Respondent Ex. 14, Photograph of Left Lower Control Arm #3.

was on May 8, 2013; before Complainant purchased vehicle.²⁶ If warrantable repair attempts were made with regard to the vibration issue, the dealer would have wanted to report them to Respondent in order to be reimbursed for the costs of repairs. By not reporting them, the dealer would be sacrificing \$91.00 per hour of work for no apparent reason. In addition, Mr. Heun added that the vehicle's wheel alignment and balancing were warranted only for 12 months or 12,000 odometer miles from the date of purchase. The first complaint which could possibly have dealt with the vehicle's alignment was not made (according to the vehicle's repair orders) until the vehicle had attained mileage of 14,269 on April 21, 2014.

Mr. Heun further testified that he did not feel that Complainant's concerns were covered under Respondent's warranties.

During cross examination, Mr. Heun testified that he did not know when any impact to the vehicle may have occurred. He does believe that there have been three to four separate impacts in the vehicle. He also stated that the tire rotation on a vehicle should be performed whenever the oil change is performed.

Mr. Heun stated that any alignment issue with the vehicle was probably due to the impacts that he stated occurred. The vehicle being out of alignment can cause abnormal wear on the tires and a vibration in the vehicle. Mr. Heun did feel a vibration in the vehicle when taking the test drive on June 4, 2015. He does not believe that damage to the shock absorbers is causing the vibration, because such damage would cause a shudder, not a vibration.

D. Analysis

Under Texas' 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 a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the 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, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant purchased the vehicle on November 16 2013, and presented the vehicle to an authorized dealer of Respondent due to his concern with a vibration issue on April 21, 2014. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the

²⁵ Respondent Ex. 2, 2013 Ram Truck 1500/2500/3500 Diesel Warranty Information, p. 16.

²⁶ Respondent Ex. 17, Warranty Claims Information.

vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a) goes on to specify that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt." Complainant has not met the requirements of this test.

Complainant only had one (1) repair attempt for the vibration issue, and this was after the vehicle's mileage exceeded 12,000. This repair was performed on April 21, 2014, when the vehicle's mileage was 14,269. Complainant testified that he presented the vehicle for repairs on the vibration issue at least twice before the April 21, 2014, visit. However, there was no indication on any of the repair orders either before April 21, 2014, or after, that indicated that Complainant raised the issue to the dealer's service advisor. It seems inconceivable that a service advisor would fail to list the issue as a concern on repair orders on four separate occasions (February 14, 2014; April 7, 2014; June 18, 2014; and August 19, 2014) when there was a repair order that specifically addressed the issue on April 21, 2014. The service advisors actually would have an incentive to include the vibration issue as something that needed to be repaired, since the dealer is reimbursed by Respondent whenever a warranty repair is performed. As such, Complainant was unable to establish that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, there is no proof that the vibration in the vehicle is caused by a defect. The evidence reveals that there are several drivers of the vehicle, any one of which could have driven over an object that may have affected the vehicle's alignment which could be causing the vibration. Respondent provided evidence of undercarriage damage to the vehicle. Although Complainant denied that the vehicle had been driven over any objects, he did not explain why there was evidence of such damage. Complainant was provided with sufficient opportunity to have the vehicle inspected by an individual of his choosing in order to address the assertions of undercarriage damage, but failed to have such inspection done in a timely manner. If the vibration is being caused by damage done to the undercarriage then any needed repairs would not be covered under warranty, since the warranty specifically precludes coverage for misuse.²⁷

Given the evidence provided in the hearing, the hearings examiner must hold that repurchase or replacement relief for Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 100,000 miles. On the date of the hearing on April 22, 2015, the

²⁷ 2013 Ram Truck 1500/2500/3500 Diesel Warranty Information, p. 16.

vehicle's mileage was 44,785. The vehicle's basic express warranty has expired. However, the powertrain warranty is still in effect. Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the powertrain warranty.

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

III. FINDINGS OF FACT

1. Sebastian M. Gonzales (Complainant) purchased a new 2013 Dodge Ram 3500 from Clear Lake Chrysler Jeep Dodge of Webster, Texas, on November 16, 2013. The vehicle's mileage was 255 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a limited warranty for the vehicle for the first three (3) years or 36,000 miles on the odometer, whichever comes first.
3. The vehicle's mileage on the date of hearing was 44,785.
4. At the time of hearing the vehicle's basic express warranty had expired.
5. Complainant purchased the vehicle in order to use it in his transport business.
6. The vehicle was driven by at least two, and possibly four, individuals other than Complainant, at various times during his ownership of the vehicle.
7. Complainant took the vehicle to Respondent's authorized dealer, Clear Lake Chrysler Jeep Dodge (Clear Lake) of Webster, Texas, on April 21, 2014, in order to address the vibration issue. The vehicle's mileage at the time was 14,269.
8. On April 21, 2014, the dealer's service technician determined that the vibration was caused by mud and dirt on the tires, so no repair was performed.
9. Complainant's vehicle was also serviced for routine maintenance by Clear Lake on the following dates:
 - a. February 14, 2014, at 7,595 miles;
 - b. April 7, 2014, at 12,223 miles;
 - c. June 18, 2014, at 18,423 miles; and
 - d. August 19, 2014, at 23,616 miles.

10. On December 19, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. In February of 2015, Steve Heun, Area Manager for Parts and Service, performed a final repair attempt and inspection on the vehicle.
12. During Respondent's final repair attempt, Mr. Heun determined that the vehicle had been involved in several impacts which could have affected the vehicle's alignment and the subsequent vibration issue.
13. Mr. Heun performed another inspection of the vehicle on June 1, 2015, at AutoNation Ford in Houston, Texas.
14. After the June 1, 2015, inspection, Mr. Heun reiterated his belief that the vehicle was involved in several impacts which may be affecting the vehicle's alignment.
15. During the test drive performed at the hearing on June 4, 2015, the vehicle vibrated at high speed and the vehicle pulled to the left.
16. On March 30, 2015, 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.
17. The hearing in this case initially convened on April 22, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Sebastian M. Gonzales, was present and represented by attorney Lara Autrey. Claudia R. Romero, Complainant's wife, appeared in person to offer testimony for Complainant. George Mendez, David Laredo, and Jose Perez Castellanos, employees of Complainant, appeared in person to offer testimony on behalf of Complainant. Respondent, FCA USA, was represented by Dave Polsinelli, associate at Beatty Bangle Strama PC. Stephen Heun, Area Parts and Service District Manager, appeared to offer testimony on behalf of Respondent. Gerardo Barchielli served as an interpreter. The hearing reconvened and the record closed on June 4, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant was present and represented by attorney Lara Autrey. Claudia R. Romero appeared in person to offer testimony for Complainant. Respondent, FCA USA, was represented by attorney Dave Polsinelli. Stephen Heun, Area Parts and Service District Manager, appeared to offer testimony on behalf of Respondent. James Clark served as an interpreter.

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 did not meet the presumption that a reasonable number of repair attempts were undertaken by Respondent prior to the filing of the Lemon Law complaint. Tex. Occ. Code § 2301.605(a).
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's powertrain warranty. 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 replacement/repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED July 6, 2015



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