

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 17-0159111 CAF**

**JAIME RAMIREZ,**  
Complainant

v.

**FCA US LLC,**  
Respondent

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Jaime Ramirez (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2011 Jeep Wrangler. Complainant asserts that the vehicle is defective because it sometimes fails to start in extremely hot weather. FCA US LLC (Respondent) argued that the vehicle is repaired and that no relief is warranted. The hearings examiner concludes that the vehicle is repaired and Complainant is not currently eligible for repair 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 June 8, 2017, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant, Jaime Ramirez, represented himself in the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. In addition, Ken Flanagan, Service Manager for Burns Motors, testified for Respondent.

A continuance in the hearing was conducted on June 22, 2017, via telephone. Complainant appeared and testified in the continuance. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. The hearing record was closed on June 22, 2017.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.606(d) provides that a “[a] proceeding under this subchapter [Subchapter M – Warranties: Rights of Vehicle Owners (Lemon Law)] must be commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.” A Complainant must file his Lemon Law complaint within the above time frame in order to have a possibility for repurchase or replacement of the vehicle as a remedy.

If the vehicle does not qualify for repurchase or replacement relief under the Lemon Law, repair relief is available to a Complainant under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” This section applies only if the Complainant originally raised his concern with the vehicle while the warranty was still in effect.

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

Complainant purchased a new 2011 Jeep Wrangler on December 30, 2011, from Ed Payne Motors (Payne) in Weslaco, Texas, with mileage of 15 at the time of delivery.<sup>1,2</sup> Respondent provided a bumper-to-bumper warranty for the vehicle good for three (3) years or 36,000 miles, whichever comes first.<sup>3</sup> On the date of hearing the vehicle’s mileage was 14,458. At this time, Respondent’s warranty has expired.

Complainant testified that he is the primary driver of the vehicle. However, he only drives it approximately twice a month. Complainant purchased the vehicle to be used for pleasure and for trips to the beach.

On March 5, 2012, the vehicle failed to start. Complainant had it towed to Payne for repair. Payne’s service technician determined that the vehicle’s battery had a low cell and recharged the battery.<sup>4</sup> The vehicle’s mileage on this occasion was 1,038.<sup>5</sup> The vehicle was in Payne’s possession for one (1) day. Complainant was not provided with a loaner vehicle while his vehicle was being repaired. Complainant was not told that he should replace the battery at the time.

Complainant took the vehicle to Payne on August 8, 2012, because it failed to start. The technician checked the battery which tested as being good.<sup>6</sup> The technician let the vehicle sit for a couple of days and then tried to start it.<sup>7</sup> It failed to start initially, but did start on the third try.<sup>8</sup> The technician determined that the vehicle’s totally integrated power module (TIPM) was shorting out and replaced it.<sup>9</sup> The vehicle’s mileage on this occasion was 2,159.<sup>10</sup> The vehicle

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<sup>1</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated December 30, 2011.

<sup>2</sup> Complainant Ex. 15, Lemon Law Complaint Form dated November 21, 2016, p. 1.

<sup>3</sup> Respondent Ex. 2, Coverages Report.

<sup>4</sup> Complainant Ex. 2, Repair Order dated March 5, 2012.

<sup>5</sup> *Id.*

<sup>6</sup> Complainant Ex. 4, Repair Order dated August 8, 2012.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

was in Payne's possession for eight (8) days. Complainant was not provided with a loaner vehicle at the time.

Complainant testified that a few days later the vehicle again failed to start. He took the vehicle to Payne for repair on August 20, 2012. Payne's technician initially determined that the vehicle's transmission control module (TCM) was not working properly; therefore, he replaced it.<sup>11</sup> After allowing the vehicle to sit for a couple of days at the dealer site, the technician was unable to start it.<sup>12</sup> The technician determined that the vehicle's wireless control module was losing communications with other components of the vehicle.<sup>13</sup> The technician replaced the module and the ignition switch in order to resolve the problem.<sup>14</sup> The vehicle's mileage at the time of the repair visit was 2,222.<sup>15</sup> The vehicle was in Payne's possession for eleven (11) days. Complainant was not provided with a loaner vehicle during this period of time.

The vehicle behaved fine for a few days, but then failed to start again. Complainant took the vehicle to Payne for repair on September 10, 2012.<sup>16</sup> Payne's technician determined that the vehicle's battery and starter motor were bad and replaced them.<sup>17</sup> The vehicle's mileage on this occasion was 2,301.<sup>18</sup> The vehicle was in Payne's possession until October 3, 2012.<sup>19</sup> Complainant was not provided with a loaner vehicle during this period of time.

Complainant testified that he did not take the vehicle for repair during 2013. He stated that he tried not to use the vehicle when it was extremely hot outside. However, the vehicle failed to start in May of 2014. He took the vehicle to Burns Motors (Burns) in McAllen, Texas for repair on May 30, 2014. Burns' technician determined that the vehicle's wireless ignition node (WIN) module was losing communications and replaced it.<sup>20</sup> The WIN module is the same as the ignition switch.<sup>21</sup> The vehicle's mileage on this occasion was 7,123.<sup>22</sup> The vehicle was in Burns' possession for twelve (12) days. Complainant was not provided with a loaner vehicle while Burns was attempting to repair his vehicle.

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<sup>11</sup> Complainant Ex. 5, Repair Order dated August 20, 2012.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

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

<sup>16</sup> Complainant Ex. 6, Repair Order dated September 10, 2012.

<sup>17</sup> *Id.*

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

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

<sup>20</sup> Complainant Ex. 7, Repair Order dated May 30, 2014. The repair order indicates that Complainant stated that the vehicle was dying and wouldn't crank at times. Complainant testified that the problem on this occasion was that the vehicle would not start on occasion.

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

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

The vehicle failed to start again in July of 2014. Complainant took the vehicle to Burns for repair on July 17, 2014. Burns' technician determined that the vehicle's ground wiring circuit was not properly making contact on the vehicle's body which was causing the vehicle not to start.<sup>23</sup> The technician repaired the wiring to make a good contact.<sup>24</sup> The vehicle's mileage on this occasion was 7,455.<sup>25</sup> The vehicle was in Burns' possession for seven (7) days. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

A few days after getting the vehicle back, it failed to start again. Complainant took the vehicle to Burns for repair on August 5, 2014. Burns' technician determined that the ignition switch and the ignition gear in the steering column were not working properly.<sup>26</sup> The technician replaced the vehicle's steering column in order to address the issue.<sup>27</sup> The vehicle's mileage was 7,512 on this occasion.<sup>28</sup> The vehicle was in Burns' possession until August 22, 2014.<sup>29</sup> Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

When Complainant picked up the vehicle from Burns on August 23, 2014, it failed to start. Burns' technician replaced the battery cable terminals in order to address the issue.<sup>30</sup> However, further tests were performed on the vehicle when it was stressed that the no start issue seemed to occur on extremely hot days.<sup>31</sup> It was determined that the WIN module and the powertrain control module (PCM) were not functioning properly and were replaced.<sup>32</sup> The vehicle's mileage on this occasion was 7,537.<sup>33</sup> The vehicle was in Burns' possession until September 29, 2014.<sup>34</sup> Complainant was offered a rental vehicle which he refused.<sup>35</sup>

Complainant testified that he did not take the vehicle for repair during 2015. He could not recall if the problem with the vehicle failing to start occurred during the year.

In July of 2016, the vehicle failed to start again. Complainant took the vehicle to Burns for repair on July 15, 2016. Burns' technician replaced the vehicle's TIPM to resolve the issue and performed a software update to the vehicle's PCM.<sup>36</sup> The vehicle's mileage on this occasion was

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<sup>23</sup> Complainant Ex. 8, Repair Order dated July 17, 2014.

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

<sup>25</sup> *Id.*

<sup>26</sup> Complainant Ex. 9, Repair Order dated August 5, 2014.

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

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

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

<sup>30</sup> Complainant Ex. 10, Repair Order dated August 23, 2014.

<sup>31</sup> *Id.*

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

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

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

<sup>35</sup> *Id.*

<sup>36</sup> Complainant Ex. 11, Repair Order dated July 15, 2016.

13,376.<sup>37</sup> The vehicle was in Burns' possession for approximately 45 days on this occasion. Complainant was not provided a loaner vehicle while his vehicle was being repaired.

Complainant picked up the vehicle from Burns in September of 2016. Within a few days the vehicle failed to start. Complainant took the vehicle back to Burns for further repair on September 13, 2016. Burns' technician performed several tests and checked several items on the vehicle; however, he was not able to duplicate the concern.<sup>38</sup> The vehicle's mileage on this occasion was 13,394.<sup>39</sup> The vehicle was in Burns' possession for almost two (2) months. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

On November 17, 2016, Complainant mailed a letter to Respondent advising them that he was filing a Lemon Law complaint because the vehicle had not been repaired and he was still experiencing problems with it.<sup>40</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on November 21, 2016.<sup>41</sup>

Complainant testified that he took the vehicle to Burns on January 24, 2017 for an inspection of the vehicle by Respondent's representative. The vehicle's mileage on this occasion was 13,702.<sup>42</sup> After the inspection was performed, the vehicle's TIPM was replaced to address the issue of the vehicle's turn signals not working.<sup>43</sup>

Complainant testified that he has not had a problem with the vehicle starting during 2017. He does keep the vehicle in his garage as much as possible so that it will start in the morning. The problem only seems to occur when the outside temperature is extremely hot.

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

#### **1. Ken Flanagan's Testimony**

Ken Flanagan, Service Manager for Burns Motors, testified for Respondent. He has forty (40) years' experience in the automotive industry. He has worked solely for FCA US LLC dealers for that entire period of time. Mr. Flanagan was once an Automotive Service Excellence (ASE) Master Certified Technician, but the certification has lapsed.

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<sup>37</sup> *Id.*

<sup>38</sup> Complainant Ex. 12, Repair Order dated September 13, 2016.

<sup>39</sup> *Id.*

<sup>40</sup> Complainant Ex. 14, Letter to Chrysler Motor Corporation dated November 17, 2016.

<sup>41</sup> Complainant Ex. 15, Lemon Law Complaint dated November 21, 2016. Complainant signed and dated the complaint on November 17, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until November 21, 2016, which is the effective date of the complaint.

<sup>42</sup> Complainant Ex. 13, Repair Order dated January 27, 2016.

<sup>43</sup> *Id.*

Mr. Flanagan testified that he first became involved with attempting to repair Complainant's vehicle in September of 2016. Complainant's wife had taken the vehicle to Burns for repair and indicated that she was frustrated with the vehicle. Mr. Flanagan reviewed the vehicle's history and contacted Respondent's technical support line for additional support in repairing the vehicle. In addition, Mr. Flanagan spoke to Stuart Ritchey, Respondent's technical advisor, to obtain his input on how to repair the vehicle. Mr. Flanagan testified that Burns' technicians tried to duplicate the problem with the vehicle from September to November of 2016, but were unable to do so. As a result, no repairs were performed during this period of time.

Mr. Flanagan also stated that he's never seen a problem with a vehicle where it would not start due to the temperature being over 100 degrees. Mr. Flanagan was aware that the problem had been duplicated in the past, but on those occasion the temperature was in the necessary range and attempts were made to repair the vehicle. Mr. Flanagan indicated that one thing that hasn't been tried was to replace the vehicle's battery cables which he may attempt if the vehicle is returned in the future for repair for the same issue.

## 2. Jan Kershaw's Testimony

Jan Kershaw, Early Resolution Case Manager, represented Respondent and offered testimony at the hearing. She indicated that a final repair attempt on the vehicle was performed by Mr. Ritchey on January 24, 2017, at Burns Motors. Mr. Ritchey was unable to duplicate the concern during the final repair attempt.<sup>44</sup> However, he observed that the vehicle's turn signals weren't working and he felt that this (as well as the no start issue) could be caused by failure of the TIPM.<sup>45</sup> As a result, he advised Burns' technician to replace the TIPM.<sup>46</sup>

## D. Analysis

In the present case, the only remedy available to Complainant is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, since Complainant filed the Lemon Law complaint on November 21, 2016, which was more than five (5) years since he purchased the vehicle which is far beyond the two and a half (2 ½) years after the date of purchase which is the deadline to request replacement or repurchase relief.<sup>47</sup>

In order to determine whether Complainant has a remedy under this section of the Occupations Code, there has to be evidence of a warrantable defect or condition in the vehicle that has not

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<sup>44</sup> Respondent Ex. 1, Inspection Report dated January 24, 2017.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Complainant Ex. 15, Lemon Law Complaint Form dated November 21, 2016.

been repaired by Respondent.

Complainant has the burden of proof to establish the existence of a defect in the vehicle. Complainant has established that the vehicle has had issues with starting in hot weather (when the outside temperature is over 100 degrees). It does appear, however, that Respondent has been able to repair the issue. The vehicle last failed to start in September of 2016 and Respondent's representatives have performed a repair on the vehicle since then. The hearings examiner continued the hearing for two (2) weeks after taking testimony from Complainant in which he stated that the problem with the vehicle starting only occurs when the outside temperature exceeds 100 degrees. The continuance was granted to provide an opportunity for the local temperature to surpass 100 degrees in order to see if the no start issued would recur. The problem has not recurred and there has been no problem with the vehicle starting. As such, the hearings examiner holds that the vehicle has been repaired. Complainant is not currently entitled to additional relief at this time.

Respondent's bumper-to-bumper warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 14,458 and Complainant has owned the vehicle for over five (5) years. As a result, the vehicle's warranty has expired. However, Respondent is still responsible to make repairs to the vehicle for any issue raised before the expiration of the warranty. *See* Tex. Occ. Code § 2301.603(b)(1).

Complainant's request for repair relief is denied. However, if the problem recurs then Respondent will be under an obligation to repair the vehicle under Section 2301.603(b)(1) of the Occupations Code.

### III. FINDINGS OF FACT

1. Jaime Ramirez (Complainant) purchased a new 2011 Jeep Wrangler on December 30, 2011, from Ed Payne Motors (Payne) in Weslaco, Texas, with mileage of 15 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle good for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 54,120.
4. At the time of hearing the vehicle's warranty was expired.

5. On March 5, 2012, the vehicle failed to start and Complainant had it towed to Payne for repair.
6. Complainant took the vehicle to Respondent's authorized dealers on the following dates in order to address his concerns with it failing to start:
  - a. March 5, 2012, at 1,038 miles;
  - b. August 8, 2012, at 2,159 miles;
  - c. August 20, 2012, at 2,222 miles;
  - d. September 10, 2012, at 2,301 miles;
  - e. May 30, 2014, at 7,123 miles;
  - f. July 17, 2014, at 7,455 miles;
  - g. August 5, 2014, at 7,512 miles;
  - h. August 23, 2014, at 7,537 miles;
  - i. July 15, 2016, at 13,376 miles; and
  - j. September 13, 2016, at 13,394 miles.
7. On March 15, 2012, Payne's service technician recharged the vehicle's battery to address the no start issue.
8. On August 8, 2012, Payne's service technician replaced the vehicle's totally integrated power module (TIPM) which had been shorting out.
9. On August 20, 2012, Payne's service technician replaced the vehicle's transmission control module (TCM), ignition switch, and wireless control module as the two modules had been losing communication with other vehicle components.
10. On September 10, 2012, Payne's service technician determined that the vehicle's battery and starter motor were bad and replaced them.
11. On May 30, 2014, Complainant took the vehicle to Burns Motors (Burns) in McAllen, Texas for repairs. Burns' technician replaced the vehicle's wireless ignition node (WIN) module and TIPM to address the no start issue.
12. On July 17, 2014, Burns' technician repaired the vehicle's ground wiring to make a good contact with the vehicle body.
13. On August 5, 2014, Burns' technician replaced the vehicle's steering column as the ignition switch and the ignition gear were not operating properly.

14. On August 23, 2014, Burns' technician replaced the vehicle's battery cables terminals, WIN module, and powertrain control module (PCM) as the vehicle was failing to start.
15. On July 15, 2016, Burns' technician replaced the vehicle's TIPM and updated the PCM in order to address the no start issue.
16. On September 13, 2016, Burns' technician inspected the vehicle and performed several tests on it, but was unable to duplicate the no start issue.
17. On November 21, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
18. On January 24, 2017, Respondent's technical advisor, Stuart Ritchey, performed a final repair attempt on the vehicle and had the vehicle's TIPM replaced because the turn signals were not working.
19. On March 20, 2017, 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 June 8, 2017, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant, Jaime Ramirez, represented himself in the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. In addition, Ken Flanagan, Service Manager for Burns Motors, testified for Respondent. A continuance in the hearing was conducted on June 22, 2017, via telephone. Complainant appeared and testified in the continuance. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. The hearing record was closed on June 22, 2017.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance).
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 § 2301.204.
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 repair relief. Tex. Occ. Code § 2301.204.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for repurchase relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

**SIGNED June 23, 2017**



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