

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0185233 CAF**

JESSIKA DIAZ,
Complainant

v.

FCA US LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jessika Diaz (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2016 Dodge Journey. Complainant asserts that the vehicle's engine makes a loud, knocking noise when the vehicle is turned off, that the vehicle intermittently makes a squeaking or grinding noise from behind the dashboard, that the radio/rear view camera display screen intermittently freezes or has a blue picture, and that the vehicle's traction control warning light illuminates intermittently. FCA US LLC (Respondent) argues that Complainant is not eligible for repurchase or replacement relief. The hearings examiner concludes that although the vehicle does have currently existing warrantable defects or nonconformities, Complainant is entitled only to repair relief, as the defects or nonconformities do not substantially impair the use or market value of the vehicle and/or not create a serious safety hazard as defined in the Occupations Code.

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 August 1, 2018, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant, Jessika Diaz, was present and was represented by her husband, Francisco Diaz. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. In addition, Geoffrey Cothran, Technical Advisor, testified for Respondent. The hearing record closed on August 1, 2018.

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

¹ Tex. Occ. Code § 2301.604(a).

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

A “serious safety hazard” is defined as a “life-threatening malfunction or nonconformity that: (A) substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes; or (B) creates a substantial risk of fire or explosion.”⁵

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 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.⁶

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2016 Dodge Journey from Potamkin Planet Dodge, in Miami, Florida on March 28, 2016.⁷ The vehicle’s mileage was 10 at the time of delivery.⁸ Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for the vehicle for three (3) years or 36,000 miles.⁹ In addition, they also provided a warranty for the vehicle’s powertrain providing coverage for five (5) years or 60,000 miles.¹⁰ The vehicle’s mileage on the date of hearing was 21,238. Respondent’s warranties were still in effect at the time of hearing.

Francisco Diaz, Complainant’s husband, testified for Complainant. Mr. Diaz stated that Complainant is the primary driver of the vehicle. Mr. Diaz stated that the subject vehicle’s engine

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.601(4).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods 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. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) 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 Complainant Ex. 1, Retail Installment Sales Contract dated March 28, 2016.

⁸ Complainant Ex. 2, Buyer’s Order, Agreement and Vehicle Information Form dated March 28, 2016.

⁹ Complainant Ex. 4, Dodge 2016 Warranty Information, p. 2.

¹⁰ *Id.*

makes a loud, knocking noise when the vehicle is turned off, that the vehicle intermittently makes a squeaking or grinding noise from behind the dashboard (air conditioning vents), that the radio/rear view camera display screen intermittently freezes or has a blue picture, and that the vehicle's traction control warning light illuminates intermittently.

Mr. Diaz testified that the vehicle's radio/rear view camera display screen intermittently started freezing up in August of 2017. Mr. Diaz took the vehicle to Ewing Chrysler–Jeep–Dodge–Ram–Fiat (Ewing) for repair to the display screen on September 12, 2017. Ewing's service technician determined that the vehicle's HVAC control head had an internal fault and replaced it in order to address the issue.¹¹ (The control head controls the air conditioning, heating, radio, and rear view camera systems in the vehicle.) The vehicle's mileage on this occasion was 14,476.¹² The vehicle was in the dealer's possession for sixteen (16) days during this repair visit. Complainant was not provided with a loaner vehicle while her vehicle was being repaired.

Mr. Diaz stated that the vehicle operated fine for a while. However, Complainant began hearing a squeaking noise from behind the vehicle's dashboard and a knocking noise from the vehicle's engine. Mr. Diaz took the vehicle for repair to Classic CDJR Fiat of Arlington, Texas (Classic) on January 22, 2018. Mr. Diaz informed Classic's service advisor of the two (2) issues. Classic's service technician verified a "loud knocking sound" from the vehicle's engine after it was turned off.¹³ He determined that the some noise was normal as the oil control valve ratchets go back to the rest position when the engine is turned off, but that the noise was unusually loud.¹⁴ As a result, the technician replaced the engine's exhaust side oil control valve to alleviate some of the noise.¹⁵ The technician was unable to duplicate the concern regarding the squeaking noise from behind the dashboard.¹⁶ No repair was done for this issue. The vehicle's mileage when it was taken to the dealership on this occasion was 16,050.¹⁷ The vehicle was in Classic's possession for seven (7) days. Complainant was not provided with a loaner vehicle while her vehicle was being repaired.

After picking up the vehicle from the dealer, Mr. Diaz felt that the engine knocking noise was unchanged and took the vehicle back to Classic for repair on February 1, 2018. Classic's service technician contacted Respondent's technical help center and was informed that the engine noise was normal for the vehicle.¹⁸ The mileage on the vehicle on this occasion was 16,130.¹⁹ The

¹¹ Complainant Ex. 5, Repair Order dated September 12, 2017.

¹² *Id.*

¹³ Complainant Ex. 6, Repair Order dated January 22, 2018.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 8, Repair Order dated February 1, 2018.

¹⁹ *Id.*

vehicle was in the dealer's possession until February 23, 2018. Complainant was provided with a loaner vehicle for a few days while her vehicle was being repaired.

Complainant mailed a letter to Respondent advising them of her dissatisfaction with the vehicle. Respondent received the letter on March 6, 2018.²⁰ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 29, 2018.²¹

Mr. Diaz testified that Respondent requested that they be allowed to perform a final inspection and repair attempt on the vehicle. This was done on May 11, 2018, at Classic. Classic's service advisor indicated that the issues to be addressed were: engine knocking three times after turning the vehicle off, air conditioner front center stack has a grinding noise that occurs randomly, on April 13 vehicle had a trouble code for brake pedal position and traction control light was on, and navigation screen becomes unresponsive.²² The vehicle was inspected by Respondent's technical representative, but no repairs were performed at the time.²³ The vehicle's mileage was 18,747 at the time.²⁴ The vehicle was in Classic's possession for the day. Complainant was not provided with a loaner vehicle at the time.

Mr. Diaz testified that the engine knocking noise occurs every time he turns off the vehicle's engine. He hears three (3) to four (4) knocks when the engine is turned off, so the noise is not constant. He feels that the noise is unnecessarily loud and should not be occurring at all. Mr. Diaz also stated that the radio/rear view camera display screen has not frozen up since prior to the September 12, 2017 repair. However, he has seen an unusual blue tint on the screen. The last incident of this occurring was on July 13, 2018. Mr. Diaz stated that the squeaking noise from behind the dashboard occurs when he changes the air conditioner settings. It occurs when the settings are changed quickly. Mr. Diaz was able to demonstrate the issue during the vehicle inspection at the time of hearing. Finally, the vehicle's traction control warning light has not illuminated since prior to the repair performed on May 11, 2018. The light was not illuminated at the time of the vehicle inspection and test drive performed on the date of hearing.

C. Respondent's Evidence and Arguments

Geoffrey Cothran, Technical Advisor, testified for Respondent in the hearing. He has worked in the automotive industry for over four (4) years. He is an Automotive Service Excellence (ASE) Certified Master Technician. He worked for a Cummins technical support hotline for over two

²⁰ Complainant Ex. 10, Letter to Chrysler Customer Assistance Center (undated) and Response from FCA dated March 12, 2018 indicating receipt of Complainant's letter on March 6, 2018.

²¹ Complainant Ex. 3, Lemon Law Complaint dated March 29, 2018.

²² Complainant Ex. 11, Repair Order dated May 11, 2018.

²³ *Id.*

²⁴ *Id.*

(2) years before being hired in his present position He's been working as a technical advisor for Respondent for the past two (2) years.

Mr. Cothran testified that he performed an inspection on the vehicle on May 11, 2018, at Classic in Arlington, Texas. Mr. Cothran was informed of four (4) potential issues with the vehicle: the traction control warning light illuminating, a knocking noise in the engine, a squealing noise behind the dashboard, and the radio/rear view camera display screen freezing or having a blue tint to the picture.

Mr. Cothran checked the vehicle's computers and did not find any trouble codes. The vehicle's traction control warning light was not illuminated and there were no codes stored which would indicate why the warning light might have been illuminated. Mr. Cothran stated that he was not able to take any other action on this issue, since there was not an existing trouble code and the light was not illuminated.

Mr. Cothran checked the vehicle visually and turned it on and off. When he turned the vehicle's engine off, Mr. Cothran heard the engine knock three (3) or four (4) times. He determined that the knocking noise is the vehicle's variable valve timing oil control valves performing a self-cleaning and the position sensor relearning neutral. This is a normal characteristic of this type of engine. Mr. Cothran did not hear a constant knocking from the vehicle's engine.

Mr. Cothran checked the operation of the vehicle's air conditioning system to try to determine the source of the squeaking noise from the dashboard. He changed the air conditioner to different settings and did not hear any noises.

Finally, Mr. Cothran checked the vehicle's radio display and rear view camera to duplicate the problem with the screen freezing or showing a picture with a blue tint. Mr. Cothran was unable to duplicate any issue with the display or screen. Mr. Cothran stated that a blue screen could be evidence of a faulty connection to the camera.

Mr. Cothran did not perform any repairs to the vehicle during the inspection. He did not check the vehicle's wiring during the inspection.

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 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.

1. Engine Knocking Issue

The evidence presented at the hearing established that the knocking noise complained of by Complainant is a normal characteristic of the engine installed in the subject vehicle. The noise is caused by the vehicle's variable valve timing oil control valves performing a self-cleaning and the position sensor relearning neutral. In addition, the noise is not extremely loud. In fact, the hearings examiner could not hear the knocking noise when sitting inside the vehicle cabin. Since the issue complained of is a design issue with the vehicle and its engine and not a manufacturer's defect, the hearings examiner must hold that the existence of the noise does not provide grounds to order a repurchase or replacement of the vehicle.

2. Traction Control Warning Light Issue

The evidence provided at the hearing established that the traction control warning light illuminating issue was raised only at Respondent's final inspection of the vehicle on May 11, 2018. Although the issue was included on Complainant's formal Lemon Law complaint, the issue was never raised to the dealer's service advisors prior to any repair performed on the vehicle. As such, there were no attempts to repair the issue prior to May 11, 2018. In addition, the light was not illuminated at the time of the repair on that date and no warning codes were stored in the vehicle's computers relating to the issue. The light was not illuminated on the vehicle at the time of inspection of the vehicle on the date of hearing. Since Respondent has not been provided with an adequate opportunity to repair the issue and it has not recurred, it cannot be grounds to order repurchase or replacement of the vehicle.

3. Radio/Rear View Camera Display Screen Issue

The evidence provided at hearing regarding the radio/rear view camera display screen established that although the system was replaced on September 12, 2017, Complainant is still having problems with the system. The last time an issue with the screen occurred was on July 13, 2018, approximately two (2) weeks prior to the hearing. At the time, the rear view camera had a bluish tint to the picture. The evidence also established, however, that the display screen has not frozen since prior to the repair on July 13, 2018. Since the display screen seems to work except for the picture quality, the issue does not create a serious safety hazard as defined in the Occupations

Code and/or does not substantially impair the use or value of the vehicle. As such, repair of the issue is the appropriate remedy. The hearings examiner will order Respondent to repair the issue.

4. Dashboard Squeaking Noise Issue

The evidence presented at hearing established the existence of a noise emanating from the vehicle's dashboard. The noise was heard from the air conditioner vents when the temperature was adjusted to extremes. However, the issue does not create a serious safety hazard as defined in the Occupations Code and/or does not substantially impair the use or value of the vehicle. As such, repair of the issue is the appropriate remedy. The hearings examiner will order Respondent to repair the issue.

Complainant's request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the vehicle's radio/rear view camera display screen and the squeaking noise being caused by the vehicle's air conditioner. Such repairs are to be completed within the time frame indicated below.

III. FINDINGS OF FACT

1. Jessika Diaz (Complainant) purchased a new 2016 Dodge Journey on March 28, 2016, from Potamkin Planet Dodge in Miami, Florida with mileage of 10 at the time of delivery.
2. FCA US LLC (Respondent) is the manufacturer of the vehicle.
3. Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles and a powertrain warranty which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.
4. The vehicle's mileage on the date of hearing was 21,238.
5. At the time of hearing both warranties for the vehicle were still in effect.
6. Complainant feels that the vehicle's engine makes a loud, knocking noise when the vehicle is turned off, that the vehicle intermittently makes a squeaking or grinding noise from behind the dashboard (air conditioning vents), that the radio/rear view camera display screen intermittently freezes or has a blue picture, and that the vehicle's traction control warning light illuminates intermittently.

7. Complainant took the vehicle to Respondent's authorized dealers in order to address the various concerns with the vehicle, on the following dates:
 - a. September 12, 2017, at 14,476 miles;
 - b. January 22, 2018, at 16,050 miles; and
 - c. February 1, 2018 at 16,130 miles.
8. On September 12, 2017, the dealer's service technician replaced the vehicle's HVAC control head in order to address the concerns with the radio/rear view camera screen display freezing up. No other issues were addressed at the time.
9. On January 22, 2018, the dealer's service technician replaced the vehicle's exhaust side oil control valve because the engine knocking noise was louder than it should have been.
10. Also, on January 22, 2018, the dealer's service technician was unable to recreate the issue with a squeaking noise coming from the air conditioner's center vents. No repair was performed for this issue.
11. On February 1, 2018, the dealer's service technician determined that the engine knocking noise which occurred when the engine was turned off was a normal characteristic of the vehicle and the engine.
12. On March 6, 2018, Respondent received Complainant's letter regarding her dissatisfaction with the subject vehicle.
13. On March 29, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On May 11, 2018, Respondent's technical advisor inspected the vehicle and determined that the engine knocking noise was normal for the vehicle and was unable to duplicate any of the other issues raised by Complainant. No repairs were performed at the time.
15. On May 25, 2018, 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.

16. The hearing in this case convened on August 1, 2018, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant, Jessika Diaz, was present and was represented by her husband, Francisco Diaz. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. In addition, Geoffrey Cothran, Technical Advisor, testified for Respondent. The hearing record closed on August 1, 2018.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (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 bears the burden of proof in this matter.
6. Complainant proved by a preponderance of the evidence that the vehicle has two verifiable defects or nonconformities. However, those defects or nonconformities do not present serious safety hazards or substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent has been unable to repair the defects or nonconformities in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Respondent had a final opportunity to cure the defects or nonconformities. Tex. Occ. Code § 2301.606(c)(2).
9. Respondent remains responsible to address and repair or correct any defects or nonconformities that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.

10. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
11. Complainant is entitled to repair relief under the terms of Respondent's warranty. 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 §§ 2301.601-.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle to the applicable warranty (*i.e.*, the squeaking noise from the dashboard/air conditioner and the radio/rear view camera display screen issues). Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²⁵ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED August 23, 2018



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

²⁵ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.