

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0185758 CAF**

<b>CESAR GARZA,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>FCA US LLC,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Cesar Garza (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2018 Dodge Ram 3500. Complainant asserts that the vehicle is defective because he hears a roaring noise when the vehicle is being driven between 60-70 mph and because the anti-lock braking system (ABS) and traction control warning lights illuminate intermittently. FCA US LLC (Respondent) argues that the vehicle does not have any defects and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is 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 hearing in this case convened and the record was closed on September 12, 2018, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant, Cesar Garza, represented himself at the hearing. Juan Roberto Santos, Spanish interpreter, provided interpreting services for Complainant Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Torry Piechowski, Technical Advisor, testified for Respondent.

**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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

value of the vehicle.<sup>2</sup> Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>3</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>4</sup>

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 the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner.<sup>5</sup>

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

Complainant purchased a new 2018 Dodge Ram 3500 pickup truck from Burns Motors (Burns) in McAllen, Texas on September 26, 2017, with mileage of 14 at the time of delivery.<sup>6,7</sup> Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for five (5) years or 100,000 miles. On the date of hearing the vehicle's mileage was 43,759. At the time of hearing, the vehicle's bumper-to-bumper warranty was expired. However, the vehicle's powertrain warranty was still in effect.

Complainant is the primary driver of the vehicle and uses it as a work vehicle. He has a lot of heavy equipment that he uses for his job and which he transports in the vehicle. Complainant says that he carries a welding machine and various tools in the vehicle most of the time. He does not know the payload capacity of the vehicle. Complainant performs most of his work in the Kermit, Texas area which necessitates long drives from his home.

Complainant testified that he first noticed hearing a "roaring" noise from the vehicle after having driven it about 5,000 miles. He only hears the noise when driving between 60 and 70 mph. He

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<sup>2</sup> *Id.*

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>5</sup> 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.

<sup>6</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated September 26, 2017.

<sup>7</sup> Complainant Ex. 2, Odometer Disclosure Statement dated September 26, 2017.

never hears the noise at any other speed. He took the vehicle to Burns for repair for the issue on November 2, 2017. The service technician verified the noise and determined that it was not tire related.<sup>8</sup> Complainant stated that no work was done to repair the vehicle at the time because of a miscommunication with the service advisor who misunderstood that Complainant wanted to take the vehicle before any work was performed to repair the issue. The vehicle's mileage on this occasion was 7,391.<sup>9</sup> The vehicle was returned to Complainant on November 3, 2017.<sup>10</sup> Complainant did not receive a loaner vehicle during the repair visit.

Complainant continued to hear the noise when driving the vehicle. He took it to Burns for repair on February 1, 2018. Burns' service technician determined that the vehicle's ring gear and pinion gear were worn out and replaced them.<sup>11</sup> In addition, the service technician replaced the vehicle's pinion bearings.<sup>12</sup> The vehicle's mileage on this occasion was 19,128.<sup>13</sup> The vehicle was in Burns' possession until February 9, 2018.<sup>14</sup> Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he continued to hear the roaring noise. On March 21, 2018, he took the vehicle back to Burns for repair. Burns' service technician determined that the rear side wheel bearings were worn out and replaced them.<sup>15</sup> The vehicle's mileage on this occasion was 24,032.<sup>16</sup> The vehicle was in Burns' possession until March 26, 2018.<sup>17</sup> Complainant did not receive a loaner vehicle while his vehicle was being repaired.

Complainant continued to feel that there was no change in the vehicle. In addition, the vehicle's ABS and traction control warning lights illuminated. He returned the vehicle to Burns for repair for the issues on March 31, 2018. Burns' service technician verified the concern.<sup>18</sup> The technician replaced the vehicle's drive shaft with a drive shaft from another vehicle and heard the same noise.<sup>19</sup> The technician also weighed the vehicle because of the work equipment which Complainant had in the bed of the truck.<sup>20</sup> The technician determined that Complainant had 3,500 pounds of equipment on the vehicle and that the weight was causing the vehicle to drop

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<sup>8</sup> Complainant Ex. 4, Repair Order dated November 2, 2017.

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

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

<sup>11</sup> Complainant Ex. 5, Repair Order dated February 1, 2018.

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

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

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

<sup>15</sup> Complainant Ex. 6, Repair Order dated March 21, 2018.

<sup>16</sup> *Id.*

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

<sup>18</sup> Complainant Ex. 7, Repair Order dated March 31, 2018.

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

<sup>20</sup> *Id.*

two and a half (2 ½) inches.<sup>21</sup> In addition, the technician replaced the vehicle's left rear speed sensor to resolve the issue of the ABS and traction control warning lights illuminating.<sup>22</sup> The vehicle's mileage at the time was 25,613.<sup>23</sup> The vehicle was in Burns' possession until April 9, 2018.<sup>24</sup>

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on April 16, 2018.<sup>25</sup>

Complainant stated that he took the vehicle to Burns for repair on April 30, 2018, because the ABS and traction control lights illuminated. The lights were not illuminated at the time of the repair visit. As a result, Burns' service did not perform any repair to address the issue.<sup>26</sup> The vehicle's mileage on this occasion was 29,098.<sup>27</sup> The vehicle was in Burns' possession until May 1, 2018.<sup>28</sup> Complainant was not provided with a loaner vehicle while his vehicle was being repaired. Complainant could not recall if he raised the issue regarding the "roaring" noise occurring when driving the vehicle between 60 to 70 mph to Burns' service advisor.

On May 29, 2018, Complainant took the vehicle to Burns for repair because the ABS and traction control lights illuminated. Burns' service technician rewired the vehicle's left rear wheel speed sensor connector in order to address the issue.<sup>29</sup> The vehicle's mileage was 33,042 at the time.<sup>30</sup> The vehicle was in Burns' possession until May 31, 2018.<sup>31</sup> Complainant received a loaner vehicle while his vehicle was being repaired.<sup>32</sup>

The vehicle's ABS and traction control warning lights both illuminated again. Complainant took the vehicle to Burns for repair for the issue on July 3, 2018. Burns' service technician replaced the vehicle's ABS module from the front left wheel well in order to resolve the issue.<sup>33</sup> The

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

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

<sup>23</sup> *Id.*

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

<sup>25</sup> Complainant Ex. 3, Lemon Law Complaint dated April 16, 2018. Although Complainant signed the complaint on April 5, 2018, it was not received by the Texas Department Of Motor Vehicles (Department) until April 16, 2018, which is the effective date of the complaint.

<sup>26</sup> Complainant Ex. 8, Repair Order dated April 30, 2018.

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

<sup>28</sup> *Id.* Complainant testified that the vehicle was in Burns' possession for two (2) to four (4) days during this repair visit, but the repair order indicates that the invoice was issued on May 1, 2018, the day after Complainant took the vehicle for repair.

<sup>29</sup> Complainant Ex. 9, Repair Order dated May 29, 2018.

<sup>30</sup> *Id.*

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

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

<sup>33</sup> Complainant Ex. 10, Repair Order dated July 3, 2018.

vehicle's mileage at the time was 36,309.<sup>34</sup> The vehicle was in Burns' possession until July 7, 2018.<sup>35</sup> Complainant was provided with a loaner vehicle while his vehicle was being repaired. The lights have not illuminated again since this repair.

Complainant testified that he took the vehicle to Burns for repair for a "knocking" noise that he would hear when driving the vehicle forwards and backwards. The repairs for this issue were performed on July 3, 2018; July 16, 2018; and August 9, 2018. The issue seemed to be resolved by the August 9, 2018 repair. This issue was not included in Complainant's lemon law complaint.

During cross-examination, Complainant testified that the only issue remaining to be resolved is the "roaring" noise that he hears when driving the vehicle between 60 and 70 mph. The issue with the ABS and traction control warning lights illuminating has been repaired.

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

#### **1. Jan Kershaw's Testimony**

Jan Kershaw, Early Resolution Case Manager, testified for Respondent. She stated that Respondent never received written notice from Complainant that he was dissatisfied with the vehicle. Ms. Kershaw testified that she made arrangements with Complainant's wife for a final repair attempt on the vehicle. This was performed on May 30, 2018, at the Burns dealership by Mr. Piechowski. Ms. Kershaw stated that there were two issues addressed during the final repair attempt: the roaring noise when driving the vehicle between 60 and 70 mph and the ABS and traction control warning lights illuminating.

#### **2. Torry Piechowski's Testimony**

Torry Piechowski, Technical Advisor, testified for Respondent. Mr. Piechowski has worked in the automotive industry for the past eight (8) years. He received a BS in automotive technology from Montana State University. Mr. Piechowski has worked in his present position for the last two (2) years. He is a fully certified technician in Chrysler, Jeep, Dodge, and Ram vehicles. He also has some Automotive Service Excellence (ASE) certifications, but is not an ASE Master Certified Technician.

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

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

Mr. Piechowski testified that he performed an inspection and final repair attempt on the vehicle on May 30, 2018, at Burns. Mr. Piechowski inspected the vehicle and attempted to address the concerns raised by Complainant.

In regard to the noise issue, Mr. Piechowski stated that he did hear the described noise when it was pointed out to him. He weighed the vehicle to ensure that Complainant was not overloading it, since Complainant was using it as a work vehicle. The items in the vehicle did not exceed the vehicle's payload capacity. Mr. Piechowski placed chassis ears on the vehicle in an attempt to determine what was causing the noise. He determined that the noise was not being created by the vehicle's transmission, rear differential, or hubs. However, Mr. Piechowski determined that the vehicle's drive-line was essentially flat. He feels that the drive-line, transmission, and tone of the engine are working off of each other and creating harmonics which bounce off of each other and create the noise that is heard when driving between 60 to 70 mph. He feels that since the noise is heard at the speed indicated when the vehicle is in 6<sup>th</sup> gear (an overdrive gear) that this is an operational characteristic of the vehicle. Mr. Piechowski feels that the weight in the rear of the vehicle has caused the vehicle's drive-line to become flatter which has contributed to the noise and that there is no repair for the issue. Mr. Piechowski stated that he does not feel that the issue is a safety issue.

In regard to the ABS and traction control warning lights illuminating, Mr. Piechowski recommended that the left rear wheel speed sensor connector be rewired in order to address the issue. He also indicated that if the lights illuminated again that there was probably a circuit issue between the inline connector and the ABS module.

#### **D. Analysis**

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

## 1. Noise Issue

The evidence provided by the parties establishes that there is a “harmonic” noise when driving the vehicle between 60 and 70 miles per hour. The dispute arises due to the fact that Complainant feels that the noise is evidence of a defect in the vehicle, while Respondent feels that the noise is an operational characteristic of the vehicle.

Respondent, through its authorized dealer, has inspected the vehicle several times due to Complainant’s concerns regarding the “roaring” noise that he hears when driving the vehicle. Respondent has determined that this is a normal noise for the vehicle due to the fact that it occurs when driving the vehicle at around 60 to 70 mph and that it occurs because the vehicle’s transmission is going to an overdrive state. In addition, the noise disappears if the driver increases or decreases the vehicle’s speed slightly. Given that Complainant only hears this noise at the described speeds, it’s logical that the noise is a result of the vehicle’s transmission going into an overdrive state.

The preponderance of the evidence establishes that the vehicle noise heard by Complainant is an operational characteristic and not a defect. Therefore, the hearings examiner finds that there is no defect with the vehicle as defined in the Occupations Code and, as such, the issue is not grounds to order repurchase or replacement of the vehicle.

## 2. ABS and Traction Control Warning Light Illuminating Issue

The evidence presented at the hearing established that the issue with the vehicle’s ABS and traction control warning light illuminating has been repaired. Complainant testified that the lights have not illuminated since the repair performed on July 3, 2018, at which time the ABS module from the vehicle’s front left wheel well was replaced and the new module calibrated to the vehicle. Since the issue has been repaired, it does not provide grounds to order repurchase or replacement of the vehicle.

Respondent’s warranty applicable to Complainant’s vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. Respondent also has provided a powertrain warranty which provides coverage for five (5) years or 100,000 miles. On the date of hearing, the vehicle’s mileage was 43,759. The vehicle’s bumper-to-bumper warranty has expired; however, the powertrain warranty is still in effect. As such, the 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. Cesar Garza (Complainant) purchased a new 2018 Dodge Ram 3500 pickup truck on September 26, 2017, from Burns Motors (Burns) in McAllen, Texas with mileage of 14 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a bumper-to-bumper warranty which provides coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first, and a separate powertrain warranty which provides coverage for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 43,759.
4. At the time of hearing the vehicle's bumper-to-bumper warranty had expired, but the powertrain warranty was still in effect.
5. The vehicle makes a roaring noise when it's driven at 60 to 70 mph and the ABS and traction control warning lights have illuminated in the past.
6. Complainant took the vehicle for repair to Burns on the following dates due to his concerns regarding hearing a roaring noise when driving the vehicle at 60 to 70 mph and due to the ABS and traction control warning lights illuminating:
  - a. November 2, 2017, at 7,391 miles;
  - b. February 1, 2018, at 19,128 miles;
  - c. March 21, 2018, at 24,032 miles; and
  - d. March 31, 2018, at 25,613 miles.
7. On November 2, 2017, Burns' service technician verified hearing a noise when driving at higher speeds, but did not perform any repairs to the vehicle due to a miscommunication between Complainant and Burns' service advisor.
8. On February 1, 2018, Burns' service technician replaced the vehicle's rear ring gear and pinion gear, and the pinion inner and outer bearings in order to resolve the noise issue.

9. On March 21, 2018, Burns' service technician determined that the rear side wheel bearings were worn out and causing the noise Complainant was hearing and replaced them.
10. On March 31, 2018, Burns' service technician verified hearing a noise when driving the vehicle around 60 mph and then test drove the vehicle after replacing the drive shaft, but the noise was still present. No repairs were performed at the time for the noise issue.
11. Also, on March 31, 2018, Burns' service technician replaced the vehicle's left rear speed sensor in order to address Complainant's concern with the ABS and traction control warning lights illuminating.
12. On April 16, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. Complainant took the vehicle to Burns for repair on April 30, 2018, because the ABS and traction control warning lights illuminated; however, the lights were not on at the time of the repair visit and no repair was performed; the vehicle's mileage was 29,098.
14. Complainant took the vehicle to Burns on May 29, 2018 to allow Respondent to perform a final repair attempt on the vehicle for the noise issue; in addition, the ABS and traction control warning lights illuminated which warranted a repair; the vehicle's mileage was 33,042.
15. On May 29, 2018, Respondent's technician determined that the noise was an operational characteristic of the vehicle where the tone of the engine, transmission, and drive-line are working off each other and creating a harmonic noise when driving the vehicle between 60 and 70 mph.
16. Also on May 29, 2018, Burns' service technician rewired the vehicle's left rear wheel speed sensor connector in order to address the concern of the ABS and traction control warning lights illuminating.
17. Complainant took the vehicle to Burns for repair on July 3, 2018, because the ABS and traction control warning lights illuminated; the vehicle's mileage was 36,309.
18. On July 3, 2018, Burns' service technician replaced the vehicle's ABS module located in the front left wheel well and calibrated the new module in order to address the concern of the ABS and traction control warning lights illuminating.

19. The vehicle's ABS and traction control light have not illuminated since July 3, 2018.
20. The vehicle still makes a slight roaring noise when it's driven between 60 and 70 mph.
21. On June 27, 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.
22. The hearing in this case convened and the record was closed on September 12, 2018, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant, Cesar Garza, represented himself at the hearing. Juan Roberto Santos, Spanish interpreter, provided interpreting services for Complainant Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Torry Piechowski, Technical Advisor, testified for Respondent.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.

6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED October 15, 2018**



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