

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0011730 CAF**

RED PANDA TRANSPORT LLC, Complainant	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
FCA US LLC, Respondent		

DECISION AND ORDER

Red Panda Transport LLC (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2019 Ram 3500 pickup truck. Complainant asserts that the vehicle has a defect or nonconformity which causes the check engine light (CEL) to illuminate, the engine to go into limp mode, and which causes a warning message regarding the vehicle’s exhaust system to display periodically on the vehicle’s dashboard. FCA US LLC (Respondent) argued that contaminated fuel in the vehicle has caused issues with the vehicle’s engine resulting in the engine not working properly, the issues are not covered by Respondent’s warranty, and, as such, Complainant is not entitled to repurchase or replacement relief. The hearings examiner concludes that Complainant is not eligible for repurchase or replacement relief since they did not meet all of the statutory requirements for such relief under the Lemon Law.

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 telephonically on December 4, 2020, before Hearings Examiner Edward Sandoval. Complainant, Red Panda Transport LLC, was present and was represented by Luis Escobar, co-owner. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. Also appearing and testifying for Respondent was Torry Piechowski, Technical Advisor. The hearing record closed on December 4, 2020.

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

In addition to these conditions, 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 by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor 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 occurs first, following the date of original delivery of the motor vehicle to the owner.⁵

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁶

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁷

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2019 Ram 3500 pickup truck from Bert Ogden Chrysler–Dodge–Jeep (Ogden) in Harlingen, Texas on October 18, 2019.⁸ The vehicle’s mileage was 15 at the

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). Texas Occupations Code § 2301.605(a) (3) provides a third method 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. This section 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.

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁷ Tex. Occ. Code § 2301.601(4).

⁸ Complainant Ex. 2, Buyer’s Order dated October 18, 2019.

time of purchase.⁹ Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.¹⁰ In addition, Respondent provided a five (5) year or 100,000 mile powertrain warranty for the vehicle.¹¹ At the time of hearing, the vehicle's mileage was 97,996. Respondent's bumper-to-bumper warranty for the vehicle has expired. However, the powertrain warranty is still in effect.

Luis Escobar, co-owner, testified for Complainant. Mr. Escobar testified that the vehicle's check engine light intermittently illuminates, the engine goes into limp mode, and a warning message regarding the vehicle's exhaust system displays periodically on the vehicle's dashboard. Complainant is a freight company and they use the vehicle in the course of their business. Oftentimes, Complainant will hook up a freight hauling trailer to the vehicle.

Mr. Escobar testified that in January of 2020, the vehicle's driver (a company employee) observed the CEL illuminate. The vehicle's engine did not go into limp mode at the time. Complainant took the vehicle to Ogden for repair for the CEL issue on January 30, 2020. Ogden's service technician found a diagnostic trouble code (DTC) on the vehicle's computer indicating that the vehicle had "low fuel rail pressure."¹² The technician "flashed" the vehicle's powertrain control module (PCM) and performed a de-soot regeneration test on the vehicle in order to resolve the concern.¹³ Mr. Escobar testified that he was informed at the time that the diesel particulate filter (DPF) was bad and that the item was not covered under warranty. The mileage on the vehicle when Complainant took it to Ogden for repair was 1,689.¹⁴ The vehicle was in Ogden's possession for three (3) to four (4) days. Complainant was not provided with a rental or loaner vehicle at the time.

Mr. Escobar testified that, after getting the vehicle back from Ogden, a warning message illuminated on the vehicle's dashboard on February 3, 2020. However, Complainant did not take the vehicle to the dealer for repair at the time. The vehicle's engine did not go into limp mode on this occasion. Mr. Escobar testified that Complainant's drivers continued to drive the vehicle even though the warning lights illuminated intermittently.

Sometime in February or March of 2020, Complainant received a recall notice for the vehicle. Complainant's driver took the vehicle to Laredo Dodge–Chrysler–Jeep–Ram (Laredo) for the recall on March 13, 2020. Mr. Escobar testified that prior to taking the vehicle to Laredo for the recall, the vehicle's engine went into limp mode on March 11, 2020. Laredo's service technician

⁹ *Id.*

¹⁰ Respondent Ex. 2, 2015 2019 Ram-2500 and 3500-Diesel Warranty Guide, p. 3.

¹¹ *Id.*

¹² Complainant Ex. 3, Repair Order dated January 30, 2020.

¹³ *Id.*

¹⁴ *Id.*

performed a diesel engine calibration on the vehicle as required by the recall notice.¹⁵ The vehicle's mileage on this occasion was 44,916.¹⁶ The vehicle was in Laredo's possession for a few hours. Complainant was not provided a rental vehicle for the time that the recall was being performed on the vehicle.

Mr. Escobar testified that a warning message appeared on the vehicle's dashboard on March 17, 2020. However, Complainant did not take the vehicle to a dealer immediately for repair for the issue. Complainant eventually took the vehicle to Ogden for repair on May 6, 2020. Ogden's service technician inspected the vehicle and found several DTCs related to excess soot in the DPF system on the vehicle's computers.¹⁷ The technician performed a force regeneration on the vehicle's engine in order to resolve the warning light issue and to address the DTCs.¹⁸ The vehicle's mileage on this occasion was 60,482.¹⁹ The vehicle was in Ogden's possession for two (2) days. Complainant was not provided a rental vehicle for the period of time that the vehicle was in the dealer's possession.

Mr. Escobar testified that when Complainant picked up the vehicle, the warning lights were off. However, a few days later the CEL turned back on. Complainant took the vehicle to Ed Payne Motors (Payne) in Weslaco, Texas for repair for the CEL issue on May 20, 2020. Payne's service technician performed a fuel injection service and cleaned out the vehicle's intake manifold in order to resolve the issue of the CEL illuminating.²⁰ The vehicle's mileage at the time was 60,569.²¹ The vehicle was in Payne's possession for approximately two (2) weeks during this repair. Complainant was not provided a loaner vehicle during the repair.

As a result of the problems with the vehicle, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) on May 27, 2020.²² Complainant did not mail a notice to Respondent informing them of their concerns with the vehicle.

Mr. Escobar testified that when Complainant picked up the vehicle from Payne after the May 20, 2020, repair. Neither the CEL nor any other of the vehicle's warning lights was illuminated. Complainant took the vehicle on the road again for use in its business. Mr. Escobar testified that the vehicle's CEL illuminated again on June 13, 2020, and stayed on for a while. The vehicle's

¹⁵ Complainant Ex. 4, Repair Order dated March 13, 2020. Although Mr. Escobar states that the vehicle's engine went into limp mode prior to taking the vehicle to Laredo for the recall, the invoice does not indicate that this information was provided to Laredo's service advisor and it appears no work was performed for the limp mode issue.

¹⁶ *Id.*

¹⁷ Complainant Ex. 5, Repair Order dated May 6, 2020.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 6, Repair Order dated May 20, 2020.

²¹ *Id.*

²² Complainant Ex. 1, Lacey Lemon Law Complaint dated May 27, 2020.

engine did not go into limp mode at this time, however. Complainant did not take the vehicle to any of Respondent's dealers for repair when the CEL illuminated.

Mr. Escobar testified that, at the time of hearing, the vehicle was in Payne's possession and that it had been there since September of 2020. Mr. Escobar stated that Payne's technician found a problem with the vehicle's turbo and that the dealer will not repair it. Mr. Escobar does not recall being asked by Respondent if they could perform an inspection and repair on the vehicle. Although he does remember being told by Respondent's representative that Respondent wanted to get one of their technicians to look at the vehicle. He is not sure if the vehicle is driveable.

C. Respondent's Evidence and Arguments

Torry Piechowski, Technical Advisor, testified for Respondent. Mr. Piechowski testified that he has worked in the automotive industry for ten years. He worked for Ford Motor Company for two (2) years as a field service engineer prior to being hired by Respondent four (4) years ago. Mr. Piechowski is an Automotive Service Excellence (ASE) Master Certified Technician.

Mr. Piechowski stated that has never personally seen the vehicle. He did perform a virtual inspection of the vehicle on November 5, 2020. The vehicle inspection was performed at Ed Payne Motors (Payne) in Weslaco, Texas. At the time of the inspection, Mr. Piechowski spoke to Payne's shop foreman and service manager to obtain more information about the vehicle. Mr. Piechowski testified that during the inspection, he found that Complainant had added a metal after-market auxiliary fuel tank to the vehicle. He also found that there were several stored diagnostic trouble codes (DTCs) on the vehicle's computers. Mr. Piechowski also stated that there were contaminants in the vehicle's fuel system at the time of the inspection, including water and debris/sediment. Water and debris in a diesel engine's fuel can affect the vehicle's fuel injectors and emissions system and can cause excessive soot in the engine. Mr. Piechowski testified that water condensation can occur inside a metal fuel tank and that this apparently occurred in this instance. Mr. Piechowski determined that the vehicle is not driveable because of the fuel quality. He feels that any repairs to the vehicle are not warrantable because the root cause of the problems with the vehicle was the poor fuel quality which was caused by Complainant's actions in installing a metal after-market auxiliary fuel tank on the vehicle.

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.

Complainant purchased the vehicle on October 18, 2019, and presented the vehicle to Respondent's authorized dealer due to the check engine light illuminating, the engine going into limp mode, and a warning message displaying on the vehicle's dashboard regarding the vehicle's exhaust system, on the following dates: January 30, 2020, at 1,689 miles; May 6, 2020, at 60,482 miles; and May 20, 2020, at 60,569 miles. In addition, Complainant presented the vehicle to Respondent's authorized dealer on March 13, 2020, at 44,916 miles for a recall regarding a diesel engine calibration. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) specifies that a rebuttable presumption that a reasonable number of attempts to repair have been made if the vehicle was presented for repair four (4) 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 occurs first, following the date of original delivery of the motor vehicle to the owner" The evidence presented at the hearing establishes that Complainant has not met the requirements of this test since Complainant presented the vehicle for repair only one (1) time before the vehicle was driven 24,000 miles. As such, Complainant has not met the presumption that Respondent has been provided with a reasonable number of attempts to repair the vehicle.

In addition, the evidence presented at the hearing indicates that Complainant did not provide written notice to Respondent that they were dissatisfied with the vehicle. Occupations Code § 2301.606(c) provides that "an order issued under this subchapter [Subchapter M, Lemon Law] may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless: (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity." Complainant never mailed written notice of their dissatisfaction with the vehicle to Respondent.

From the evidence presented, it is apparent that Complainant has not met the requirements for replacement or repurchase relief under the Occupations Code, since only one (1) repair attempt was performed on the vehicle prior to the vehicle having been driven 24,000 miles and because they did not provide written notice of the defect to Respondent. In addition, it appears that Complainant may have been at fault in causing the vehicle's engine to fail to work properly due

to the installation of a metal after-market auxiliary fuel tank which caused the vehicle's fuel to become contaminated.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for five (5) years or 100,000 miles. On the date of hearing, the vehicle's mileage was 97,996. As such, the vehicle's bumper to bumper warranty had expired; however, the powertrain warranty was still in effect.

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

III. FINDINGS OF FACT

1. Red Panda Transport LLC (Complainant) purchased a new 2019 Ram 3500 pickup truck on October 18, 2019, from Bert Ogden Chrysler–Dodge–Jeep (Ogden) in Harlingen, 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 which provides coverage for three (3) years or 36,000 miles and a powertrain warranty which provides coverage for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 97,996.
4. At the time of hearing the bumper-to-bumper warranty for the vehicle had expired, but the powertrain warranty was still in effect.
5. Complainant's employees have experienced the vehicle's check engine light (CEL) illuminating, the engine going into limp mode, and observing a warning message regarding the vehicle's exhaust system display periodically on the vehicle's dashboard.
6. The vehicle was serviced by Respondent's authorized dealers, Ogden and Ed Payne Motors (Payne) located in Weslaco, Texas, on the following dates because of Complainant's concerns with the vehicle:
 - a. January 30, 2020, at 1,689 miles;
 - b. May 6, 2020, at 60,482 miles; and
 - c. May 20, 2020, at 60,569 miles.
7. On January 30, 2020, Ogden's service technician performed a powertrain control module (PCM) flash and regeneration to the vehicle's engine in order to address an issue where

the vehicle's check engine light (CEL) illuminated and a diagnostic trouble code (DTC) had triggered indicating that the vehicle had low fuel rail pressure.

8. On May 6, 2020, Ogden's service technician found several DTCs on the vehicle's computers indicating that the engine had excessive soot. The technician performed a force regeneration to the vehicle's engine in order to address the issue.
9. On May 20, 2020, Payne's service technician performed a fuel injection service and cleaned out the vehicle's intake manifold to address the issues of the vehicle's CEL illuminating and the vehicle losing power.
10. On March 13, 2020, Complainant took the vehicle to Laredo Dodge–Chrysler–Jeep–Ram (Laredo) located in Laredo, Texas in order to have a recall performed. The vehicle's mileage was 44,916 at the time.
11. During the repair visit described in Findings of Fact #10, Laredo's service technician performed a diesel engine calibration as required by the recall. No other work was performed at the time.
12. On May 27, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. Complainant did not mail notice of their dissatisfaction with the vehicle to Respondent.
14. On November 5, 2020, Respondent's technical advisor, Torry Piechowski, performed a virtual inspection of the vehicle at Payne's location.
15. During the inspection described in Findings of Fact #14, Mr. Piechowski discovered several DTCs stored on the vehicle's computers, that Complainant had added an after-market auxiliary fuel tank to the vehicle, and that the fuel in the vehicle was contaminated with water and debris.
16. Mr. Piechowski determined that the issues with the vehicle's engine not performing properly was due to the contaminated fuel and that any repairs to the vehicle were not covered under Respondent's warranty because the issues were due to an outside influence.
17. On September 1, 2020, 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.

18. The hearing in this case convened telephonically on December 4, 2020, before Hearings Examiner Edward Sandoval. Complainant, Red Panda Transport LLC, was present and was represented by Luis Escobar, co-owner. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. Also appearing and testifying for Respondent was Torry Piechowski, Technical Advisor. The hearing record closed on December 4, 2020.

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 did not prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. 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).
8. Complainant did not mail written notice of the defect to Respondent. Tex. Occ. Code § 2301.606(c)(1).

9. Respondent remains responsible to address and repair or correct any defects 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.

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-.613 is hereby **DISMISSED**.

SIGNED January 29, 2021.



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