

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0010467 CAF**

**ANTONIO RODRIGUEZ,  
Complainant**

v.

**FCA US LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Antonio Rodriguez (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2020 Jeep Gladiator. Complainant asserts that the subject vehicle has a defect that has caused the vehicle’s transmission not to work properly. FCA US LLC (Respondent) argued that the vehicle has been repaired, that no defect or nonconformity currently exists in the vehicle, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired and that repurchase, or replacement relief is not warranted.

**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 was conducted on October 22, 2021, via Microsoft Teams before Hearings Examiner Edward Sandoval. Antonio Rodriguez, Complainant, appeared and represented himself at the hearing. Anna Pena, Complainant’s friend, was an observer in the hearing. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. Also appearing and testifying for Respondent was Torry Piechowski, Technical Advisor. Alex Montez, interpreter, provided Spanish language interpretation for Complainant. The hearing record closed on October 22, 2021.

**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 manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to these conditions, a rebuttable presumption can be established 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.<sup>6</sup>

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.<sup>7</sup>

“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.<sup>8</sup>

Finally, a rebuttable presumption can be established 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 that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs 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.<sup>9</sup>

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

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.601(4).

<sup>9</sup> Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.<sup>10</sup>

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

Complainant purchased a new 2020 Jeep Gladiator on September 30, 2020, from Love Chrysler–Dodge–Jeep (Love) located in Alice, Texas.<sup>11</sup> The vehicle's mileage at the time of delivery was 15.<sup>12</sup> Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provided a five (5) year or 60,000 mile powertrain warranty for the vehicle's powertrain. On the date of hearing the vehicle's mileage was 13,453 miles and the vehicle's warranties were still in effect.

Complainant feels that the vehicle is unsafe because he has had an issue with the vehicle's transmission. In addition, he has heard noises from the area around the vehicle's transmission which he feels indicates that there is still a problem with the transmission.

Complainant testified that he did not test drive the subject vehicle before purchasing it because he had driven a similar vehicle at another dealership in San Antonio, Texas. He did state, however, that he drove the vehicle from Alice, Texas where he purchased it to his home in Laredo. He did not notice any issues with the vehicle's transmission on that drive.

On or about February 4, 2021, Complainant attempted to drive the vehicle home from work. However, the transmission would not shift into reverse. In addition, once Complainant was able to get the vehicle going, the transmission would not shift past second gear. Complainant took the vehicle to Laredo Dodge–Chrysler–Jeep (LDCJ) located in Laredo, Texas for repair for the transmission issue on February 4, 2021. LDCJ's service technician replaced the vehicle's transmission in order to resolve the concern.<sup>13</sup> The vehicle's mileage on this occasion was 5,518.<sup>14</sup> The vehicle was in LCDJ's possession for over a month. Complainant was not provided a loaner vehicle while his vehicle was being repaired.

After receiving the vehicle back from the dealer after the transmission replacement, Complainant began hearing a noise like metal on metal and feeling a vibration when he drove the vehicle. He

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<sup>10</sup> Tex. Occ. Code § 2301.605(c).

<sup>11</sup> Complainant Ex. 2, Retail Purchase Agreement dated September 30, 2020.

<sup>12</sup> Complainant Ex. 4, Odometer Disclosure Statement dated September 30, 2020.

<sup>13</sup> Complainant Ex. 5, Repair Order dated February 4, 2021.

stated that it seemed as if something was loose on the vehicle. On or about April 7, 2021, while driving the vehicle, Complainant heard a noise that sounded as if something had fallen from the area of the vehicle where the transmission is located. Complainant had the vehicle towed to LCDJ for repair for the issue around the same date. LCDJ's service technician inspected the vehicle and found a loose bolt on the vehicle's drive line from the prior transmission repair.<sup>15</sup> (A photo of the vehicle's underside on the date of the repair shows a loose bolt and a missing bolt.)<sup>16</sup> The technician tightened and replaced the bolts in order to resolve the issue. The vehicle's mileage on this occasion was 6,825.<sup>17</sup> Complainant testified that the vehicle was in LCDJ's possession for approximately two weeks.<sup>18</sup> Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on April 29, 2021.<sup>19</sup> In addition, Complainant sent a letter to Respondent advising them that he was dissatisfied with the vehicle.<sup>20</sup> Complainant testified that he was asked by Respondent's representative that they be allowed to have the vehicle inspected by one of Respondent's technical advisors. However, he doesn't recall when the request was made. Complainant stated that he believes that the inspection of the vehicle took place on September 20, 2021, at LCDJ.

Complainant testified that he continued to hear noises from the vehicle and feeling a vibration. He stated that the noise was more noticeable. Complainant took the vehicle to LCDJ for repair for the noise and vibration issues on August 6, 2021. LCDJ's service determined that the clamp from the front to rear exhaust was coming loose and that the clamp had come loose from its locking location.<sup>21</sup> The technician seated the clamp in its locking position and tightened the clamp in order to resolve the issue.<sup>22</sup> The vehicle's mileage on this occasion was 11,112.<sup>23</sup> The vehicle was in LCDJ's possession for about two (2) weeks on this occasion. Complainant was not provided a loaner vehicle while his vehicle was being repaired.

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

<sup>15</sup> Complainant Ex. 6, Repair Order dated April 21, 2021.

<sup>16</sup> Complainant Ex. 9, Photos of Subject Vehicle.

<sup>17</sup> Complainant Ex. 6, Repair Order dated April 21, 2021.

<sup>18</sup> Complainant testified that the vehicle was LCDJ's possession for about two (2) weeks and that the dealer's representative initially refused to give him an invoice for the repair. After Complainant insisted that they provide an invoice, the invoice given to him was dated for the date that he picked up the vehicle, April 21, 2021, not when he initially took it in for repair.

<sup>19</sup> Complainant Ex. 1, Lemon Law Complaint dated April 29, 2021.

<sup>20</sup> Letter to Chrysler Dodge Jeep Ram, undated.

<sup>21</sup> Complainant Ex. 8, Repair Order dated August 6, 2021.

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

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

Complainant stated that Respondent's representative inspected the vehicle on September 20, 2021, at LCDJ. No repairs for the vehicle's transmission were performed at the time.

Complainant stated that he is not currently feeling any vibration in the vehicle. In addition, he has not had any issues with the vehicle's transmission not acting properly since the repair that took place on February 4, 2021, when the transmission was replaced.

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

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

Jan Kershaw, Early Resolution Case Manager, testified for Respondent. Ms. Kershaw stated that Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle, plus a five (5) or 60,000 mile powertrain warranty for the vehicle's powertrain.

Ms. Kershaw testified that Respondent received Complainant's written notice in which he indicated his dissatisfaction with the vehicle on or about June 4, 2021. Ms. Kershaw attempted to contact Complainant to discuss what he felt was wrong with the vehicle. Ms. Kershaw sent a letter to Complainant on June 15, 2021, asking him what issues he was having with the vehicle. After speaking to Complainant, Mr. Kershaw scheduled an inspection of the vehicle by Respondents' technical advisor, Torry Piechowski, for September 20, 2021, at LDCJ.

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

Torry Piechowski, technical advisor, testified for Respondent in the hearing. Mr. Piechowski stated that he has worked in the automotive industry for eleven (11) years. He began his career as a service technician at a Toyota and Subaru dealership. He has an associate degree and a bachelor's degree in Automotive Technology. In June of 2014, Mr. Piechowski was recruited by Ford Motor Company to work in their company office in Michigan as a service engineer. In October of 2016, Mr. Piechowski was hired by Respondent for his present position. Mr. Piechowski is an Automotive Service Excellence (ASE) Certified Master Technician. In addition, he has obtained the highest levels of certification for Respondent's technicians, equivalent to a master technician.

Mr. Piechowski testified that he inspected the subject vehicle on September 20, 2021, at LDCJ. The vehicle's mileage at the time was 12,352.<sup>24</sup> Mr. Piechowski stated that he was advised of four (4) concerns with the vehicle: the transmission not shifting correctly, a concern that the

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<sup>24</sup> Respondent's Ex. 1, Inspection Report dated September 20, 2021.

installation of the replacement transmission was not done properly, a water leak, and a loose sun visor.<sup>25</sup> Mr. Piechowski stated that he initially checked the vehicle for diagnostic trouble codes (DTC's) and found one dealing with the tire pressure monitoring system which he cleared because the tires all had the correct air pressure. Mr. Piechowski then checked the vehicle's transmission control module (TCM) to ensure that the clutch levels were above five (5). Mr. Piechowski stated that he then test-drove the vehicle for 61 miles in various driving conditions and did not experience any shifting concerns with the vehicle's transmission.<sup>26</sup> In addition, Mr. Piechowski indicated that he did not hear any sounds or feel any vibrations to indicate that there were any issues with the previously missing bolt from the drive line.<sup>27</sup> Mr. Piechowski did not feel that it was necessary to perform any repairs to the vehicle's transmission as it seemed to be operating properly.

#### **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.

Complainant purchased the subject vehicle on September 30, 2020 and presented the vehicle to Respondent's authorized dealer for repair to the vehicle's transmission on February 4, 2021; and on or about April 7, 2021. The vehicle's transmission was replaced on February 4, 2021 and some bolts on the vehicle's drive line were replaced and tightened on April 7, 2021. In addition, the vehicle was inspected by Respondent's technical advisor on September 20, 2021, at which time the advisor indicated that the vehicle did not need repair.

Occupations Code § 2301.603 provides that "a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's converter's or

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<sup>25</sup> *Id*

<sup>26</sup> *Id*.

<sup>27</sup> *Id*. In his inspection report, Mr. Piechowski did address the water leak and sun visor issues which he indicated needed to be repaired, but they are not within the purview of this decision since they were not included on the Lemon Law complaint.

distributor's express warranty." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired, then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.<sup>28</sup> In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

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, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 13,453 and it remains covered under the warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

### III. FINDINGS OF FACT

1. Antonio Rodriguez (Complainant) purchased a new 2020 Jeep Gladiator on September 30, 2020, from Love Chrysler–Dodge–Jeep (Love) located in Alice, Texas with mileage of 15 at the time of delivery.
2. The manufacturer or distributor of the vehicle, FCA US LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for the first three (3) years or 36,000 miles after delivery, whichever comes first. In addition, Respondent provided a powertrain warranty which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 13,453.
4. At the time of hearing the vehicle's warranties were still in effect.
5. On February 4, 2021, the vehicle's transmission refused to shift past second gear.

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<sup>28</sup> Tex. Occ. Code § 2301.605.

6. Complainant took the vehicle for repair to Respondent's authorized dealer, Laredo Dodge–Chrysler–Jeep (LDCJ) located in Laredo, Texas to address his concerns with the vehicle's transmission on the following dates:
  - a. February 4, 2021, at 5,518 miles; and
  - b. on or about April 7, 2021, at 6,825 miles.
7. On February 4, 2021, LDCJ's service technician replaced the vehicle's transmission in order to resolve Complainant's concern with the vehicle's transmission not shifting past second gear.
8. On or about April 7, 2021, Complainant had the vehicle towed to LDCJ for repair due to his concern that something had fallen out of the area where the transmission is located.
9. During the repair visit described in Findings of Fact #8, LDCJ's service technician found a missing bolt and a loose bolt on the vehicle's drive line which had caused a loud pop sound which sounded as if something had fallen out of the transmission.
10. During the repair visit described in Findings of Fact #8, the service technician replaced and tightened the bolts on the drive line.
11. On April 29, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. Respondent received a letter from Complainant on or about June 15, 2021, in which he indicated his dissatisfaction with the vehicle.
13. On August 6, 2021, Complainant took the vehicle to LDCJ for repair because he was hearing a rattle noise from the exhaust area of the vehicle and feeling vibration when he was driving. The vehicle's mileage at the time was 11,112.
14. During the repair visit described in Findings of Fact #13, the service technician determined that the vehicle's rear exhaust was coming loose because of a loose clamp. The clamp was secured by the technician in order to resolve the issue.
15. On September 20, 2021, Respondent's technical advisor, Torry Piechowski, inspected the vehicle at the LDCJ dealership pursuant to a request for a final inspection of the vehicle. The vehicle's mileage was 12,352 at the time.



16. During the inspection described in Findings of Fact #15, Mr. Piechowski determined that there were no issues with the vehicle's transmission, and it was operating as designed.
17. Complainant has not experienced any issues with the vehicle's transmission since prior to February 4, 2021.
18. On July 9, 2021, 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.
19. The hearing in this case was conducted on October 22, 2021, via Microsoft Teams before Hearings Examiner Edward Sandoval. Antonio Rodriguez, Complainant, appeared and represented himself at the hearing. Anna Pena, Complainant's friend, was an observer in the hearing. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. Also appearing and testifying for Respondent was Torry Piechowski, Technical Advisor. Alex Montez, interpreter, provided Spanish language interpretation for Complainant. The hearing record closed on October 22, 2021.

#### 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 replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED October 25, 2021.**



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